

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-6049

United States Court of Appeals

FOR THE SECOND CIRCUIT

COUNTY OF SUFFOLK, COUNTY OF NASSAU, et al.,

Appellees,

—against—

SECRETARY OF THE INTERIOR, et al.,

Appellants,

NATIONAL OCEAN INDUSTRIES ASSOCIATION, et al.,

Intervenor-Appellants.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Appellee.

—against—

THOMAS H. WHITE, SECRETARY OF THE INTERIOR,

Appellant,

NATIONAL OCEAN INDUSTRIES ASSOCIATION, et al.,

Intervenor-Appellants.

BRIEF FOR APPELLEE, COUNTY OF NASSAU

WILLIAM GHELMAN

County Attorney of Nassau County

Attorney for Appellee County of Nassau

Nassau County Executive Building

Mineola, N.Y. 11501

JOHN F. PUGHAN

Deputy County Attorney

of Counsel



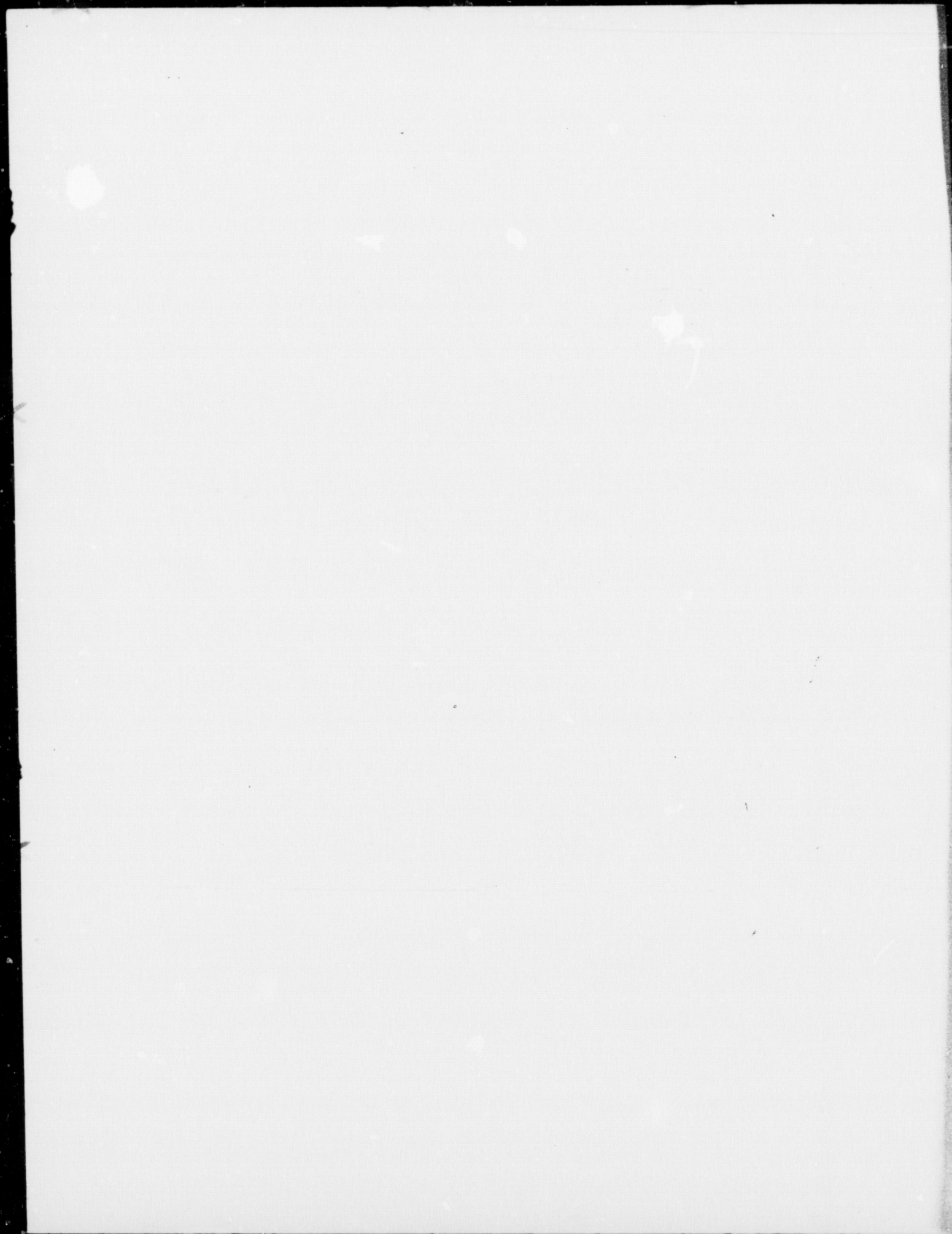


TABLE OF CONTENTS

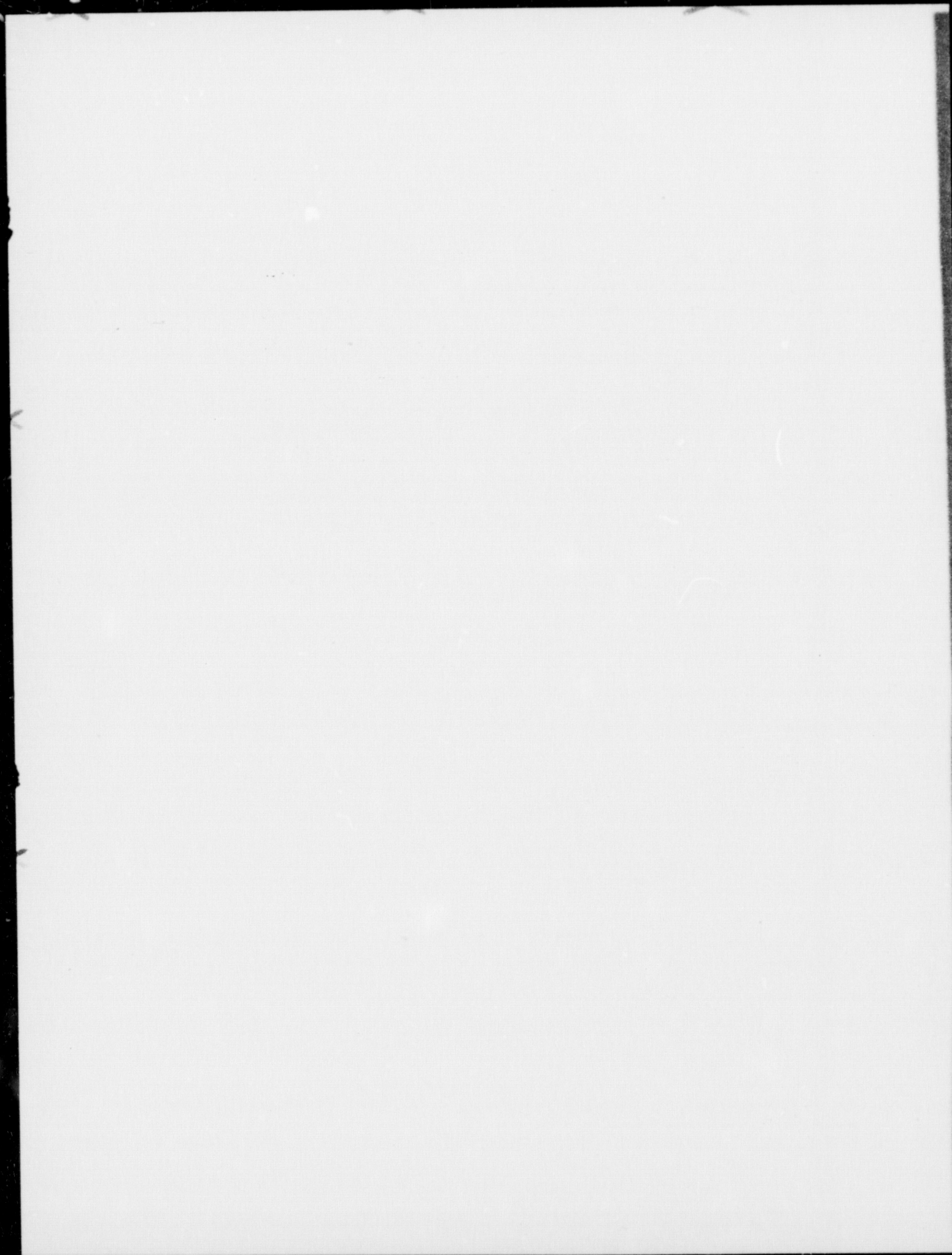
	PAGE
INTRODUCTION	
A. Interior's Post-Sale Environmental Activity	1
B. CEQ Guidelines	3
ARGUMENT	
I. EIS No. 40 Discussions of the State-Local Land Use Prerogative of Prohibiting Pipeline Landfalls and the Discussion of OCS Related Land Use Impacts Are Inadequate and Violate NEPA and 40 CFR §1500.8	4
A. The Environmental Implications of State-Local Land Use Powers	4
B. OCS Related Land Use Impacts	9
C. CEQ Guidelines	13
II. The Absence of Any Discussion of Pipeline Locations in Terms of Cost Effectiveness and Environmental Impacts Renders the EIS No. 40 Fatally Defective Under NEPA and 40 CFR §1500.8	17
III. The Secretary's Failure to Adequately Consider and Discuss the Alternative of Separation of Exploration from Production Violated NEPA and 40 CFR §1500.8(4)	27
IV. The Secretary's Cost Benefit Analysis of Sale No. 40 was Defective and Inadequate and Violated NEPA and 40 CFR §1500.8	33

TABLE OF CASES

	PAGE
<i>Aberdeen & Rockfish R. Co. v. Scrap</i> (Scrap II), 422 U.S. 289 (1975)	27
<i>Alabama ex rel. Baxley v. Corps of Engineers</i> , 411 F. Supp. 1261 (N.D. Ala. 1976)	17
<i>Atchison, Topeka & Santa Fe v. Callaway</i> , 382 F. Supp. 610 (D.D.C. 1974)	17
<i>California v. Morton</i> , 404 F. Supp. 26	27
<i>Calvert Cliffs' Coordinating Committee v. AEC</i> , 449 F. 2d 1109, 1114	32, 33
<i>Camp v. Pitts</i> , 411 U.S. 138	36
<i>Chelsea Neighborhood Associations v. U.S. Postal Service</i> , 516 F. 2d 378, 386-87 (2d Cir. 1975)	17, 31, 32
<i>Dunlop v. Bachowski</i> , 421 U.S. 560 (1975)	36
<i>EDF v. Corps of Engineers</i> , 429 F. 2d 1123	25, 27, 33
<i>Hudson Preservation Conference v. FPC</i> , 453 F. 2d 463	36
<i>Kleppe v. Sierra Club</i> , 427 U.S. 390	35
<i>Monroe County Conservation Council v. Volpe</i> , 472 F. 2d 693, 697 (2d Cir. 1972)	31
<i>Natural Resources Defense Council v. Callaway</i> , 524 F. 2d 79, 92 (2d Cir. 1975)	17, 31, 32
<i>NRDC v. Morton</i> , 485 F. 2d 827, 837	24, 30, 31, 35
<i>Scientists' Institute for Public Information v. AEC</i> , 481 F. 2d 1079, 1092 (D.C. Cir., 1973)	24
<i>Sierra Club v. Lynn</i> , 502 F. 2d 43 (5th Cir. 1974)	33
<i>Sierra Club v. Morton</i> , 510 F. 2d 813 (5th Cir. 1975)	25, 33
<i>Silva v. Lynn</i> , 482 F. 2d 1282	32, 33
<i>Trout Unlimited v. Morton</i> , 509 F. 2d 1276	33

STATUTES

	PAGE
Coastal Zone Management Act	
16 USC §1456	2
36 Fed Reg. 1943	33
37 Fed Reg. 15018	33
30 CFR §250.12	2
40 CFR §1500.8(a)(1)	4, 13, 14, 15, 21, 22, 23, 26
(a)(2)	9, 20, 26
(a)(3)(ii)	13, 14, 26
(a)(4)	28, 29, 32
(a)(8)(8)	33, 34, 35
National Environmental Policy Act	
§4332	31
Outer Continental Shelf Lands Act	
43 USC §1334	2



United States Court of Appeals

FOR THE SECOND CIRCUIT

COUNTY OF SUFFOLK, COUNTY OF NASSAU, *et al.*,

Appellees,

—against—

SECRETARY OF THE INTERIOR, *et al.*,

Appellants,

NATIONAL OCEAN INDUSTRIES ASSOCIATION, *et al.*,

Intervenor-Appellants.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Appellee,

—against—

THOMAS KLEPPE, SECRETARY OF THE INTERIOR,

Appellant,

NATIONAL OCEAN INDUSTRIES ASSOCIATION, *et al.*,

Intervenor-Appellants.

BRIEF FOR APPELLEE, COUNTY OF NASSAU

Introduction

A. Interior's Post-Sale Environmental Activity

In what appears to be an attempt to once again obfuscate and cloud the real NEPA issues concerning the adequacy of the EIS No. 40, federal appellants at pages 13-17 of

their brief, detail, as though somehow relevant, proposed post-sale activities by the Department of the Interior. We are told about *future* compliance with various lease stipulations, *future* "promised" additional and subsequent impact statements with respect to development plans, and *future* enforcement of various OCS operating orders.

We are gratuitously assured, though again inane to the issues at bar, that oil company lessees will provide the affected coastal states with various information necessary for local planners to prepare for the onslaught of a plethora of OCS related land-based facilities. We are again presumably assuaged by the "consistency provisions" of the Coastal Zone Management Act of 1972, 16 U.S.C. §1456, as amended.

The only significant thing we are told is that if OCS "production operations are causing unacceptable environmental impacts, the supervisor *may suspend* the lessee's operations . . ." (Emphasis supplied). 43 U.S.C. §1334(a)(1), 30 CFR 250.12.

The significance of this admission lies in the fact that it underscores the gravity and irrevocability of the Secretary's decision to proceed with a massive 25 year OCS production program in the face of major inadequacies and critically misrepresented facts in the EIS No. 40. The fact that leases may only at best be "suspended" reinforces appellees' claim that only the real NEPA-EIS adequacy issues should be examined in this appeal and not post-sale activities which are not only speculative per se, but in any event, irrelevant. Appellants have insisted, and indeed, Justice Weinstein has agreed, throughout these proceedings, that the adequacy of EIS No. 40 be tried and judged only in the real-world context and time frame of its preparation and filing prior to May 1976. Yet, inconsistently, appellants would rather have this Court merely assume future compliance with various post-sale stipulations and orders as though, even if same were proper, this could

somehow mitigate and ameliorate existing and proved NEPA violations. This Court, it is respectfully submitted, must address the NEPA issues determined by the Court below—not the post-sale activities of Interior and particularly not the national energy policy and political opinions gratuitously offered through the recently orchestrated *amicus* briefs.

The overriding issue in this matter is clear. The District Court summed it up concisely:

"The issue before this court is not the wisdom or desirability of this country's total 'energy program,' or of any of its specific aspects. It is not this court's function to pass on the substantive merits of the Sale 40 lease project, either in its present or potentially modified form. It is, rather, concerned with *whether the Secretary of the Interior, in reaching his decision to lease these lands, complied with the statutory requirements governing his responsibilities as trustee and administrator of the public resources of the outer continental shelf; specifically, the question posed is whether his decision was fully and accurately informed and made after adequate consideration of viable alternative programs and potential adverse environmental impacts.* (Emphasis supplied). (Dec. pp. 1-2, JA 23-24).

B. CEQ Guidelines—40 CFR §1500.8

Throughout the preliminary hearing and trial below and in extensive prior briefings on the alleged violations of NEPA, appellees have also charged the Secretary of the Interior with specific and numerous violations of 40 CFR §1500.8 et seq., commonly referred to as the CEQ Guidelines. These Guidelines designate by regulation those points and elements which must be contained within an environmental impact statement prepared by all federal agencies. Indeed, Justice Weinstein found and discussed

several specific violations on pages 21 and 70 of his final order and memorandum (JA 43, 93).

By their total and conspicuous silence with respect to these charged violations of 40 CFR §1500 in the preparation of the EIS Sale No. 40 (both federal appellants and Intervenor NOIA not having even addressed same in any brief filed or oral argument heard to date), appellants must be presumed to either acknowledge them or hope to draw this Court's attention away from what is an obvious major issue which they cannot defend.

As the following points and arguments each involve specific alleged violations of 40 CFR §1500.8, appellee, County of Nassau, has appended, for this Court's convenience, a copy of the regulations in question (Appendix A).

ARGUMENT

I.

EIS No. 40 Discussions of the State-Local Land Use Prerogative of Prohibiting Pipeline Landfalls and the Discussion of OCS Related Land Use Impacts Are Inadequate and Violate NEPA and 40 CFR §1500.8.

A. The Environmental Implications of State-Local Land Use Powers Were Not Discussed In EIS No. 40.

Federal appellants and intervenors NOIA, beginning at pages 17 and 32 of their respective briefs, again, in an attempt to prove that the Secretary or any reader of EIS No. 40 would have been alerted to the State-local powers to bar or restrict pipeline landfalls, repeat the litany of alleged specific references to such powers in the documents. Appellees respectfully invite this Court's attention to each and every such reference which must be read not merely in the isolated ad hoc manner recommended by appellants but, rather, in the context of the entire document. It is

respectfully submitted that the significant passages referred to by appellants and further cited by Justice Weinstein (Dec. pp. 15 to 18, JA 37-40), when read within the context of the whole, are found to deal with one or more of the following three subject matters:

a) State-local environmental *monitoring* and regulation of emissions and discharges, etc.—not pipeline prohibition;

b) The *siting* of OCS related facilities onshore within *certain* zones and within certain environmentally accepted standards (the only variable being not *whether* pipelines will be permitted but, rather, *where* they shall be permitted to landfall);

c) The *mitigation* of the environmental effects of pipelines and other OCS related facilities—not pipeline prohibition.

FES—

Volume II p. 516-518—discusses the “*types* of development permitted in the coastal zone,” not pipeline prohibition.

Id. pp. 426-430—discusses *mitigation* of potential environmental effects, not prohibition.

Id. pp. 434-438—discusses state *permits* for discharge of oil and oil clean-up systems, not pipeline prohibition.

Id. pp. 450-451—discusses prevention of “*siting* of an oil terminal” in *certain* types of areas, again not pipeline prohibition.

Id. pp. 453-454—discusses *planning*, not prohibition.

Id. p. 456—discusses “*procedures* for obtaining local review and approval of proposed pipelines,” not pipeline prohibition.

Id. p. 456—discusses “*local planning*” which addresses “potential adverse effects,” not prohibition.

Id. p. 457—discusses *siting* of pipelines in “least environmentally hazardous areas,” not prohibition.

Id. p. 586—again discusses the review of state development plans, not prohibition.

Volume III, p. 31—discusses and *assumes* pipeline *siting* in “zones of least environmental import,” —not their prohibition.

Id., p. 64—discusses and *assumes* that states will “plan and *coordinate* the industry needs” with local authorities, not pipeline prohibition.

In effect then, not one of the above, nor any of the other statements heretofore cited by defendants, represents a clear, concise or meaningful statement recognizing the fact that states as well as local municipalities may flatly bar pipeline landfalls from within their respective jurisdictions. Even more significant, however, is the failure of the EIS No. 40 to adequately describe the serious environmental implications resulting from such a refusal.

It is respectfully submitted that any recital of the environmental control laws and regulations of the various levels of government alone, without discussion of the prerogative of prohibition, per se, is meaningless. As this Court properly observed at page 64 of its prior decision: “The real bite in the environmental control exercised by states is not their monitoring functions, however, but in their *licensing capacity*.” (Emphasis supplied).

Yet, assuming arguendo, as did Justice Weinstein (Dec. p. 18, JA 40) that the Secretary himself must be presumed to have at least been inately aware of the local power to prohibit pipeline landfalls, federal appellants and NOIA, as is evidenced by their briefs, continue to miss the crucial point of this discussion. Justice Weinstein put it clearly and succinctly:

“But passing references to, and abstract listings of, state and local authority is only the beginning and not the end of the NEPA required inquiry. The next, and

by far more crucial step is a projection of the site-specific, pragmatic, empirical effects of the likely exercise of such power. It is the *impact* of local authority, not its mere *existence*, that must be studied and evaluated." (Dec., p. 19, JA 41).

In short, the questions which cry for answers not given by the drafters of EIS No. 40 are simply: 1) Whether and how these state-local powers are likely, if at all, to affect the cost analysis and pipeline routing alternatives of oil and gas delivery systems from specific OCS tracts to specific areas onshore (such as refineries)† and 2) Does the possibility of a flat prohibition or restriction and rerouting of pipelines over greater and convoluted corridors onshore by state and local government, decrease the cost effectiveness of pipelines, thus increasing the likelihood of oil tanker transportation? These questions are particularly significant when one considers the severe adverse environmental impacts associated with the lopsided oil spill ratio of tankers to pipelines—16:1 (Aug. Dec., p. 62 JA 217).

The appellants acknowledge this environmentally dangerous discrepancy in the oil spill ratio as well as the historical fact that "90% of the Gulf of Mexico OCS production is landed in pipeline" (Vol. III EIS, p. 18). Interior's hope, "expectation" and "anticipation" that pipelines will be used to transport OCS oil pervades the "site-specific" EIS No. 40, yet nowhere within this document does there appear any discussion of the practical "site-specific" impacts, upon the projected modes of oil transportation, of not only a flat prohibition of pipeline landfalls but a severe restriction as to their points of entry. Interior and the EIS No. 40 have yet to address the obviously serious environmental implications inherent in a decision by several coastal states or counties to require extensive pipeline rerouting over significantly greater distances than are presently contemplated by Interior.

As Justice Weinstein correctly observed at page 66 of his earlier decision: "Even if the states do not prohibit oil pipelines, they may restrict their point of entry, requiring a landfall, for example, at the industrialized northern section of the New Jersey coast or at the refinery area in the tri-state New Jersey-Delaware-Pennsylvania region". (JA.221). Were this to occur, as indeed the trial record justifies its probability, this extensive rerouting will, of its own sheer economic weight, prejudice the scales in favor of tankering and, therefore, render pipeline construction economically infeasible.

The environmental impact implications of this possibility, which is more than reasonable in light of prevailing local laws and land use policies adduced through the testimony of NRDC's witnesses, was never discussed in EIS No. 40, thus rendering it defective under NEPA and associated case law.

As illustrated by the lower court's decision:

"If the assumption by the Secretary that pipelines will transport the oil in case of a large strike would have been different had the state situation been brought home to him, then the entire NEPA decision-making process is invalidated. Misplaced reliance on such a material proposition raises a question as to the adequacy of the NEPA documents and the reliability of the Secretary's decision." (August Dec. p. 67, JA 222).

It is significant to note that each of the witnesses presented by appellee, NRDC—Mitchell, Jarmer, Couldren, Muziani, Thomas and Corman revealed the existence of various land use plans, policies and zoning laws which, in light of the nature of their respective municipalities' economies and environment, would likely reject pipelines in order to protect their sources of livelihood. Rather than reiterate and again reference the specifics of their respective testimony, this Court is respectfully referred to the

brief on NRDC which discusses same in greater detail. The significant point which must be considered is that, had the Secretary taken the trouble to inquire, he could have easily been made aware of these various legislative and policy impediments to pipeline landfalls within the coastal zone of New Jersey.

It is respectfully submitted that the Secretary, in failing to adequately consider these impediments, violated 40 CFR §1500.8(a)(2), which requires an impact statement discussion of:

"(2) The relationship of the proposed action to land use plans, policies and controls for the affected area. *This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State and local land use plans, policies and controls, if any, for the area affected. * * * Where a conflict or inconsistency exists, the statement should describe the extent to which the agency has reconciled its proposed action with the plan, policy or control, and the reasons why the agency has decided to proceed notwithstanding the absence of full reconciliation.*"

The testimony adduced from the NRDC witnesses, especially when compared with the so-called discussion of local legislation with EIS No. 40, clearly indicates BLM's failure to discuss "how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State and local land use plans, policies and controls . . . for the area affected. . ." (Emphasis supplied).

B. OCS Related Land Use Impacts Were Inadequately Discussed and Considered in EIS No. 40.

Federal appellants have mistakenly insisted throughout these proceedings that the land use impacts associated with pipeline construction and other OCS onshore related in-

dustries and facilities are not subject to prediction because the size of the eventual oil and gas strike in the Baltimore Canyon is unknown; and that, therefore, the EIS No. 40 need not consider these impacts in any significant detail. Despite this convenient disclaimer, which by any definition is lame, Dr. Mitchell, in extensive and laborious detail, illustrated uncontrovertedly in his testimony on both the preliminary hearing and trial below, the full range of reasonably anticipated land use impacts associated with OCS exploration and production. Rather than fall back on the convenient, yet inane, excuse that the questionable size of the oil strike would have rendered his analysis impossible, Mitchell used as a guideline, the very limits of the anticipated strike used and referred to by federal appellants throughout the EIS No. 40, to wit, 0.4-1.4 billion barrels of oil.

A sampling of Dr. Mitchell's testimony quickly illustrates the gross inadequacies of the OCS land use impact discussion within the EIS No. 40:

a) Dr. Mitchell described in summary form the extensive and wide range of OCS related industries and onshore support facilities necessary for oil exploration and production, including terminals, gas processing plants, platform construction yards, refineries, chemical plants, municipal and other infra-structure support facilities (Hearing tr. 444-446, 468, JA 457-459, 478). The key point which he repeatedly makes is that the lack of information and the absence of any discussion of expected land use impacts within the EIS documents in any detail, will result in the "overwhelming" of "onshore planning capability" in a short period of time. (Hearing tr. 446, JA 459).

b) Dr. Mitchell made the point that some forms of development begin to occur immediately and that the problem of timing of the development and its consequences for local planners was not made known within the EIS No. 40 (Hearing tr. 451-457, JA 461-467).

c) Dr. Mitchell stressed repeatedly that "The impact statement should have indicated the scale of the impacts expected, their relatively compressed brief period, in which large impact can occur. The extent to which in some specific locations throughout the region might be affected". (Hearing tr., p. 458, JA 468).

d) Dr. Mitchell indicated that EIS No. 40 fails to describe in any detail whatsoever the need for pipe coating plants—a necessarily inherent element in OCS production and that this type of information was available to the Secretary (Hearing tr., p. 484-485, JA 494-495).

e) Dr. Mitchell established that, in spite of Interior's disclaimer that land use demands and acreage associated with pipeline construction cannot be estimated now, they indeed are subject to prediction. He proceeded to recite in elaborate detail not only the number and miles of pipelines (using the range of 0.4-1.4 billion barrels recovery) but also the acreage necessary and other associated land use impacts in terms of rights-of-way, disruptions, etc. (Hearing tr. 494-503, JA 504-513). He stated that these rights-of-way impacts (although the information was available) were clearly not discussed in EIS No. 40 (Hearing tr. p. 502, JA 512).

f) Dr. Mitchell indicated that the EIS No. 40 discussion of land use impacts of oil refineries in terms of their water demands (New Jersey is experiencing severe water supply problems) and the petro-chemical industries which they attract downstream are quite environmentally significant (Hearing tr., p. 513-523, JA 523-533). He established that EIS 40 fails to detail such refinery land use impacts in the Mid-Atlantic region.

g) Dr. Mitchell, in perhaps his most illuminating testimony, revealed that Interior's projected total of 645 acres impacted by OCS related activity is grossly erroneous and miscalculated. He estimated conservatively, that *direct* impacts alone would involve 12,220 acres for "direct line

commitments" (Hearing tr. pp. 526-529, JA 536-539). It is particularly significant to note that Dr. Mitchell, upon the trial, revealed that Interior utilized considerably larger and additional land use impact standards for the EIS No. 42 (George's Bank) than with EIS No. 40. He testified that while Interior projects for sale No. 42, only one-quarter of the recovery estimated for Sale No. 40, the projected land required for OCS related facilities is *four times greater* for Sale No. 42 than for Sale No. 40—representing a difference factor of 1/16 (Trial tr. 18, 25, JA 1180, 1187). He observed, for example, that total acreage required for onshore oil and gas pipelines, while not calculated in EIS No. 40, are suddenly now calculated in EIS No. 42 ". . . using no different information than was already available for lease Sale No. 40". (Trial tr. p. 19, JA 1181).

h) In perhaps his most significant testimony, Dr. Mitchell put all of his prior testimony in true perspective by concluding that the information provided by "EIS No. 40 is misleading and likely to cause them (coastal planners) to underestimate severely both the amount and types of impacts". (Trial tr. p. 28, JA 1190).

It is significant to note in this context that one of the federal defendants' witnesses, offered in rebuttal to Dr. Mitchell, Mr. Wenstrom, readily conceded that any pipeline construction associated with OCS development carries with it "severe land impacts". Mr. Wenstrom further conceded that, as a planning premise or objective, it would be good for the state planners, especially with the coastal zones, to know generally where pipeline corridors will be located before they are fixed. Yet, and in spite of his above-cited testimony, Mr. Wenstrom, in a conflicting statement, further admitted that he did not deem it "reasonable" or "necessary" to address these "severe" land use impacts within the EIS No. 40 (even within a simple high-low range of the acreage that might be required for these corridors). (Hearing tr. p. 2504-2506, JA 1104-1105).

This one piece of testimony, when read together with that of Dr. Mitchell, clearly reveals a fatal flaw in defendants' reasoning and particularly of their interpretation of their NEPA responsibilities and duties. Defendants deliberately chose to avoid discussion of land use impacts associated with pipeline construction and other OCS related facilities as unnecessary and unreasonable on the one hand, and incredibly on the other, openly admitted throughout the EIS No. 40 and PDOD that pipeline construction would certainly occur. In fact, Mr. Wenstrom again conceded that if an oil strike of significant magnitude is found, it would "certainly" be carried ashore by pipeline. (Hearing tr. p. 2505, JA 1105). Again, no caveat or qualification with respect to the state-local prerogative to reject pipelines was mentioned by Mr. Wenstrom in this context.

C. CEQ Guidelines.

In light of the significant inadequacies of the EIS No. 40 in terms of reasonably projected OCS land use impacts, adduced through Dr. Mitchell's testimony, this Court is respectfully referred to the provisions of 40 CFR §1500.8, et seq. These regulations, requiring all federally prepared impact statements to meet specific minimum criteria, has been totally and incredibly ignored by appellants in their respective arguments to date.

40 CFR §1500.8(a)(1) requires that:

"Agencies should also take care to identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives (see paragraphs (a)(1), (3)(ii), of this section.)" (Emphasis supplied).

The EIS No. 40 makes absolutely no reference to the projected population increases associated with and sur-

rounding even an OCS platform construction yard. Yet, Dr. Mitchell testified that literally a new town of 20,000 persons occupying about 6,000 acres (with a myriad of public infra-structure facilities) was a reasonable and accurate projection of population and growth impacts in light of past OCS experience. (Hearing tr. 473-475, JA 483-485). No such information appeared in EIS No. 40.

40 CFR 1500.8(a)(3)(ii) further requires appellants to discuss in the impact statement:

"(ii) Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis. Many major Federal actions, in particular those that involve the construction or licensing of infrastructure investments (e.g., highways, airports, sewer systems, water resource projects, etc.), stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, through their impacts on existing community facilities and activities, through inducing new facilities and activities, or through changes in natural conditions, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated if expected to be significant (using data identified as indicated in §1500.8(a)(1) and an assessment made of the effect of any possible change in population patterns or growth upon the resource base, including land use, water, and public services of the area in question." (Emphasis supplied).

Clearly, no such estimate of population and growth impacts was contained in EIS No. 40. It is respectfully submitted that Dr. Mitchell's projection of 12,220 acres (as

opposed to BLM's erroneous projection of 645 acres) necessary for OCS associated land impacts, although *directly* related to OCS activity, could, at the least, be described as "secondary or *indirect* consequences" as per the above regulation. Whether considered direct or indirect, Interior did not discuss or project the obvious OCS land impacts described by Dr. Mitchell, in any detail whatsoever within the subject documents, and, therefore, violated 40 §CFR 1500.8.

40 CFR §1500.8(a)(1) further mandates that the EIS provide:

"[1] *A description of the proposed action, a statement of its purposes, and a description of the environment affected, including information, summary technical data, and maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact by commenting agencies and the public.*" (Emphasis supplied).

Dr. Mitchell's testimony, which was virtually uncontradicted by any of appellants' witnesses, it is submitted, at the least established that the EIS No. 40 was clearly not "adequate to permit an assessment of potential environmental impact by commenting agencies and the public". If it failed to permit an assessment by those local planners who will take the brunt of preparing for OCS land-based facilities, how could it have permitted an assessment of environmental impact by the public?

The most significant issue to be gleaned from the above was best stated by Justice Weinstein:

"NEPA is an 'environmental full disclosure law' aimed precisely at the sort of large-scale, government-initiated project involved here, and designed to assure that potential environmental impacts are carefully thought through with serious insight. *Chelsea Neighborhood Associations v. U.S. Postal Service*, 516 F. 2d 378, 386-87 (2d Cir. 1975), citing *Monroe County Con-*

servation Council v. Volpe, 472 F. 2d 693, 697 (2d Cir. 1972).

NEPA's requirement for a 'thorough study' and a 'detailed statement' is the central feature of the Environmental Impact statement, without which 'the conclusions and decisions of the agency appear to be detached from and unrelated to environmental concerns.' *Monroe County Conservation Council v. Volpe*, 472 F. 2d 693, 697-98 (2d Cir. 1972).

It is therefore essential that adequate information be made available before the critical agency decision is taken. *Natural Resources Defense Council v. Callaway*, 524 F. 2d 79, 92 (2d Cir. 1975)." (Dec. pp. 20-21, JA 42-43).

It is respectfully submitted that with respect to the issue of state-local land use powers and OCS land use impacts, the EIS No. 40 was decidedly void of the essential and critical data and information contemplated by NEPA, the CEQ Guidelines and the above-cited case law. As Justice Weinstein further and properly pointed out in his decision, environmental impact statements "must be specific, pragmatic, serious studies of actual projects with real environmental aspects. It is not sufficient to cram an enormous volume full of generalities, or to consider in depth irrelevant, tangential or marginal factors". (Dec. p. 20, JA 42).

While the EIS discussions of marine environmental impacts are no longer at issue, having been found by the District court to have been adequately covered in EIS No. 40, it is nevertheless noteworthy that Justice Weinstein's characterization of the oil transportation phase of the document was shared by and applied to the entire document by plaintiffs' marine biology experts, especially Dr. Freudenthal, Dr. McHugh and Dr. Prager. "The NEPA documents read like a theoretical college thesis, written without the hard empirical data needed by any practical person making a decision." (Dec. p. 19, JA 41).

Recent NEPA cases, cited by both appellants and appellees, have specifically enjoined significant projects because of the failure of the prospective NEPA documents to detail the project and its anticipated environmental impacts in a real world pragmatic context. Clearly, such was not done by Interior within EIS No. 40. *Chelsea Neighborhood Associations v. U.S. Postal Service*, 524 F. 2d 378 (2d Cir. 1975); *Natural Resources Defense Council v. Callaway*, 524 F. 2d 79 (2d Cir. 1975), *cert. den.*; *ex rel. Baxley v. Corps of Engineers*, 411 F. Supp. 1261 (N.D. Ala. 1976); *Atchison, Topeka & Santa Fe v. Callaway*, 382 F. Supp. 610 (D.D.C. 1974).

II.

The Absence of a Discussion of Pipeline Locations in Terms of Their Cost Effectiveness and Environmental Impact Renders EIS No. 40 Fatally Defective Under NEPA and 40 CFR §1500.8.

In order to determine if the Secretary complied with NEPA by purposefully deferring all consideration and discussion of possible alternative pipeline routes and their impacts until commercial quantities of oil are discovered (FES Vol. II, p. 457), one must examine the extent and reasonableness of the information available to him at the time of the preparation of EIS 40.

Interior assumed that oil pipelines would be placed in one to four corridors—(2) 24 inch to 36 inch pipelines per corridor—or, in other words, eight possible separate pipelines (FES Vol. II, pp. 17 and 18). Dr. Mitchell, in his testimony with respect to the inadequate discussions of land use impacts associated with onshore pipeline corridors, stated that the facts and bases for his conclusions were clearly available to the Secretary at the time of the documents' preparation (Hearing tr., pp. 497, 502, JA 507, 512).

Contrasted with Dr. Mitchell's extensive description of the onshore land impacts of pipelines is what Judge Weinstein categorized as the "brief, vague and abstract conjecture concerning the extremely broad geographical areas that might be involved" (Dec. p. 25, JA 47). Interior states that "... it is *most probable* that pipeline terminals would be located somewhere along the New Jersey coast, with pipeline routes over land to the refineries." (FES, Vol. II, p. 227). As determined by Justice Weinstein:

"NEPA required the Secretary to explore the site-specific impacts of pipelines along definite routes, *at least to the extent that such routes were ascertainable based on information available at the time.*" (Emphasis supplied) (Dec., p. 27, JA 49).

Shell Oil's Manager of Land Transportation, Brunjes, it is recalled, testified that he had computed the economic feasibility of pipelines (versus tanker transportation) of various pipeline routes from OCS leasing sites to the refineries in Philadelphia. The arguments of appellants that Shell Oil did not undertake a *site-specific environmental* pipeline corridor study, while accurate per se, clearly avoids the true significance of the Shell study and/or Brunjes' testimony. Justice Weinstein, contrary to appellants' position, did specifically acknowledge that "Brunjes testified that Shell Oil based its conclusions with respect to *transportation and cost* on various routes to Philadelphia". (Dec., p. 29, JA 51). This admittedly economically designed study was:

"... based upon such sensible assumptions as those concerning where oil would be found, how leases would be developed, the life of possible fields, the quality of the oil, the cost of pipeline, and the *availability of rights-of-way.*" (Dec., p. 29, JA 51).

The true significance, it is submitted, of Brunjes' testimony was an admission that Shell Oil, as indeed would any

corporate enterprise similarly situated, considered local zoning and land use policies as well as the physical availability of rights-of-way, or, in other words, state and local opposition to pipelines:

"Also, we had to, in taking a look at the overland route, we took a quick look at the right-of-way availability, and we assume that on the right of way that wherever possible that existing corridors would be used. In other words, railroad rights of ways, along roads, utilities, easements, gas lines, electric lines—that nature." (Trial tr., p. 853, JA 1727)

Mr. Brunjes conceded further that the alternate routes were:

" . . . determined not by detail field analysis—on the ground analysis, *but in pursuing this in the various courthouses and through the various local administrations and whatever.* This was developed from detailed maps that show railroads. It was also developed from past experiences in types of land like this. It was also developed through a process of at least screening out—*screening out to try to determine whether there were any state or local laws or ordinances or regulations that similarly excluded pipelines from traversing this area.*" (Trial Tr. p. 865, JA 1739).

Brunjes further stated that ". . . the study concepts are limited to *known and published* information at the time of the study." (Trial Tr., p. 1109, JA 1805). Since the study predated the EIS No. 40, the Secretary could have easily availed himself of this "known and published information".

Again, Brunjes and Shell Oil, as would any corporate business in a similar context, was determined to assess the implications of both *environmental* impact and *local opposition* upon the *economic* feasibility of pipeline construction.

"[R]ecently this transportation study and its economics were evaluated utilizing the straight median

of New Jersey as the final location to come ashore with the oil transported from production fields. *However, recent decisions made by the Environmental Protection Agency for the State of New Jersey revealed the possibility of excluding the entire Atlantic coast of New Jersey from any offshore oil lines, and therefore a short approach location in the Delaware Bay was selected as possible landing point. However, this may cause considerable local opposition because of the areas economic reliance on the oyster beds located from the Maurice River to Arnold Point.* (Trial Tr., pp. 987-88, JA 1788-1789).

Nowhere does this information appear within EIS No. 40 although apparently the oil industry knew of its existence well prior to the preparation of the EIS documents. In this context, this Court is again respectfully referred to 40 CFR §1500.8(a)(2) which requires an impact statement to discuss:

*"(2) The relationship of the proposed action to land use plans, policies and controls for the affected area. This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State and local land use plans, policies and controls, if any, for the area affected * * * Where a conflict or inconsistency exists, the statement should describe the extent to which the agency has reconciled its proposed action with the plan, policy or control, and the reasons why the agency has decided to proceed notwithstanding the absence of full reconciliation."*

The simple fact that Shell Oil had already, and apparently, as a matter of sound common business practice, performed such a study, (illustrating graphically how local laws, land use policies and specific environmental impacts could affect the cost effectiveness of the "antic-

ipated" and environmentally preferable pipeline mode of oil transportation) clearly exposes the illogic of the Government's convenient position that similar studies could not have been performed because of the unknown eventual size of the oil recovery. Shell Oil "... looked at a range of production going from say 25,000 barrels a day up to 200,000 barrels a day" (Trial Tr., p. 852, JA 1726), yet Interior could not or rather would not do at least the same.

Nowhere within his decision does Justice Weinstein insist that the Secretary should have performed the type of "ocean bottom survey" and full-blown environmental impact study of specifically fixed pipeline corridors, as suggested by appellants. Rather and pointedly, he properly acknowledges the failure of the Secretary to look at *regional* and *generic* environmental impacts as well as the failure to "... even attempt to consider the potential harm to shellfish spawning grounds and enumerable species of fish and waterfowl. Nor does the vague FES assess the effect of pipeline construction on swimming, boating, fishing and other recreational activities on and around the Delaware Bay and River where pipelines are *likely* to be sited". (Dec., p. 35, JA 57).

CEQ Guidelines

It is respectfully submitted that the CEQ Guidelines require a discussion of the reasonably anticipated environmental and land use impacts of pipeline construction—none of which were adequately addressed in EIS No. 40. 40 CFR §1500.8(a)(1) requires that an environmental statement provide for:

"A description of the proposed action, a statement of its purposes, and a description of the environment affected, including information, summary technical data, and maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact by commenting agencies and the public." (Emphasis supplied).

It is respectfully submitted that any impact statement which presumably discusses the total range and scope of reasonable alternatives in an OCS oil and gas production proposal, while remaining virtually silent on how and where that oil and gas will be safely transported to shore, as well as silent on the reasonably anticipated land use impacts related to that oil transportation, is grossly inadequate and deficient on its face. Clearly, such an impact statement does not provide "a description of the proposed action . . . adequate to permit an assessment of potential environmental impact by . . . the public." Unless of course, the government would have us believe that oil, if discovered, will not be transported ashore.

It is further submitted that the testimony of Mr. Brunjes of Shell Oil, if nothing else, illustrated forcefully the failure of BLM to perform any meaningful analysis of pipeline routing, especially as its cost-benefit analysis would affect the possibility of oil tanker usage. Instead, BLM simply disclaims that: "No estimates of on-shore acreage utilized by pipelines can presently be made. On-shore pipelines for oil (2-4) will be required from landfall sites to existing refineries." And, as to the miles of pipeline that will prove necessary using any set of assumptions: "No meaningful estimate can be made at this time." (EIS No. 40, Vol. II, pp. 285-286). Certainly, Shell Oil would not concede that its pipeline feasibility study did not contain any "meaningful estimate".

The above cited 40 CFR 1500.8(a)(1) requires the preparation by BLM, at the very least, in its "description of the proposed action", of ". . . maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact by commenting agencies and the public."

No such maps or diagrams or corridor "lines" were prepared to inform the public or to assuage what Dr. Mitchell described in detail as the legitimate concerns of

local and state planners in New Jersey, who would eventually be directly impacted by OCS related pipelines and other facilities.

Indeed the lower court at the close of the trial, focused sharply on this issue:

"Whether there should have been lines drawn so people could have focused on where the pipelines might come in, what the environmental problems were with respect to those pipelines, what the zoning problems might have been, so that the public and the Secretary could have been able to say this is what it is. I don't know. That is troublesome to me, and I must say that there was very fine testimony as to the map by the Shell consultant and it brought it further to a head in my mind." (Trial Tr. 1227-1228, JA 1929-1930).

In addition, 40 CFR §1500.8(a)(1) requires a discussion of the reasonably anticipated environmental and land use impacts of *pipeline* routing on shore from the OCS, within EIS No. 40. This subsection specifically states that:

"The statement should also succinctly describe the environment of the area affected as it exists prior to the proposed action, *including other federal activities in the area affected by the proposed action which are related to the proposed action.*"

What federal activity could be more "related" to OCS oil production in Sale No. 40 than that of pipeline corridor management and construction. This subsection goes on to state:

"The *inter-relationships and cumulative* environmental impacts of the proposed action *and other related federal projects shall be presented in the statement.*" (Emphasis supplied).

The incongruity of federal appellants' interpretation of their NEPA duties to assess and disclose in detail the

potential environmental impact of the proposed activity is painfully apparent. In short, appellants concede that pipelines will "certainly" be a critical part of OCS production, yet refuse to discuss the land-use and environmental implications associated with same, even within the easy to use context of their own high-low recoverable oil estimates. Dr. Mitchell, an acknowledged land-use and planning expert, found no real difficulty in assessing and disclosing these same impacts; Shell Oil found no real difficulty in analyzing alternate pipeline corridor routes and their cost-benefits. Yet BLM, with all the talent at their disposal, could not or perhaps rather would not, assess these impacts. The detail and ready availability of the information adduced through the testimony of Dr. Mitchell clearly indicates that BLM would not have had to engage in the so-called "crystal ball" inquiry referred to by defendants. *NRDC v. Morton*, 458 F. 2d 827, 837.

"Foreseeing the unforeseeable", it is conceded, is never required under NEPA. However, to scurry behind the convenient smoke screen characterization of "crystal ball inquiry", especially in light of the Secretary's failure to perform the most basic of land use impact forecasting by Dr. Mitchell, is by any definition, a "cop-out" of the first magnitude:

"It must be remembered that the basic thrust of an agency's responsibilities under NEPA is *to predict the environmental effects of proposed action before the action is taken* and those effects fully known. Reasonable forecasting and speculation is thus implicit in NEPA, and *we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry'.*" *Scientists' Institute for Public Information v. AEC*, 481 F. 2d 1079, 1092 (D.C. Cir., 1973) (Emphasis supplied).

The "rule of reason", cited by both appellees and appellants was first established in *EDF v. Corps of Engineers*, 429 F. 2d 1123 at 1131. It was held that:

"In determining whether an agency has complied with Section 102(2), we are governed by the *rule of reason*, i.e., we must recognize on the one hand that the Act mandates that no agency limits its environmental activity by the use of an artificial framework and on the other that the act does not intend to impose an impossible standard on the agency. The court's task is to determine whether the EIS was compiled with objective good faith and whether the resulting statement would permit a decision-maker to fully consider and balance the environmental factors." (Emphasis supplied) in accord: *NRDC v. Callaway*, 524 F. 2d 79 (2d Cir., 1975); *NRDC v. Morton*, 458 F. 2d 827 (D.C. Cir. 1972).

It is respectfully submitted that, by deliberately limiting the scope of its environmental impact analysis to *specifically exclude* a discussion of pipeline corridor siting and associated land use impacts as well as any meaningful discussion of the readily discernible environmental implications of a state's decision to prohibit pipeline and related facilities (while promising to prepare pipeline corridor EIS's at some future unspecified date) federal defendants have violated this "rule of reason". BLM, in effect, has limited its "environmental activity by the use of an *artificial framework*". *EDF v. Corps of Engineers*, *supra*, at 1131). It has thereby not permitted the Secretary or public to "fully consider and balance" all the environmental factors.

MAFLA

Appellants have proffered the case of *Sierra Club v. Morton*, 510 F. 2d 813 (5th Cir. 1975), commonly referred

to as "MAFLA", for the theory that deferring pipeline corridor impact studies until after an oil discovery is made would not violate NEPA per se. The *MAFLA* decision, however, is easily distinguishable in that there was no expert evidence or testimony submitted on the trial thereof which was even remotely similar to that adduced through Shell Oil and Brunjes, and that this issue was, therefore not fully presented, explored or argued for the benefit of the District or Appellate Courts. In fact, 5th Circuit Judge Clark specifically found that the judicial focus of the case was "blurred as usual by the lack of technical and scientific expertise". (*Id.* at p. 817). If there is an agreement at all, among the parties hereto, it is surely that such was not the case upon either the preliminary hearing or trial below.

In addition, the *MAFLA* decision did not deal with or discuss in any manner the provisions of 40 CFR §1500.8, et seq. which, it is submitted, requires a discussion and description of pipeline construction impacts as an integral and indispensable element of the total Mid-Atlantic Sale 40 project (40 CFR §1500.8(a)(1)(2)(3)(ii)).

Further, the *MAFLA* decision did not involve a frontier OCS area, such as the Mid-Atlantic Sale 40 tracts but, rather dealt with an area representing an extension of prior leased Gulf of Mexico tracts which had been developed for over a twenty-year period. The Gulf OCS development has a long history of 90% pipeline transportation to the coastal areas, which areas are totally dissimilar in terms of local economy, development, density and political opposition, from the New Jersey coastal zone. Doubtless, the 5th Circuit's decision to allow, under these set of circumstances, fragmentation of subsequent pipeline studies was rendered in the familiar and non-frontier context of the Gulf of Mexico.

It must be presumed that the 5th Circuit Court would therefore have reached a different opinion on the "fragmentation of pipeline studies" issue, had they been pre-

sented with as full an expert a record as was presented here by appellees and especially had the Court there dealt with the provisions of 40 CFR §1500, et seq.

It is also significant to note here that the Court in *MAFLA* determined that a particular Gulf OCS impact statement, not the one at issue here, was adequate and included "... sufficient pre-statement analysis of possible environmental hazards from pipeline locations, construction and leakage." (*Id.* at p. 824). The 5th Circuit, however, added a distinct qualification thereto stating: "*We are not unmindful of the rule that the sufficiency of the EIS must be determined without reference to possible future action*", including not only the possible compliance with lease stipulations and operating orders, but, particularly, the possible preparation of subsequent impact statements which serve no valid purpose but, rather, serve to fragment the total project and utilize an "artificial framework", in contravention of the oft-cited "rule of reason". *EDF v. Corp. of Engineers*, 429 F. 2d 1123 at 1131.

III.

The Secretary's Failure to Adequately Consider and Discuss the Alternative of Separation of Exploration From Production Violated NEPA and 40 CFR §1500.8(4).

Appellants have cited the decision of *Aberdeen & Rockfish R. Co. v. Scrap* (Scrap II) 422 U.S. 289, 1975 as well as *California v. Morton*, 404 F. Supp. 26 for the proposition that the tract selection process, described through the testimony of Ms. Gresham, does not have to be preceded by an EIS. It is conceded that these cases do in fact hold that an EIS need not be prepared prior to tract selection. This is not now however nor has it ever been an issue in these proceedings. It is respectfully submitted that the

appellants have completely misconstrued the relevance and significance of Gresham's testimony and indeed the underlying issue therein.

40 CFR § 1500.8(4) states specifically that:

"Sufficient *analysis* of such alternatives and their *environmental benefits, costs and risks* should *accompany the proposed action* through the agency review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects." (Emphasis added)

This subsection requires that the *analysis* rather than the statement itself must "accompany" the proposal.

Appellants argue, citing *Mafla, supra*, that the 5th Circuit upheld the adequacy of a lease sale EIS "... even though it contained no discussion of *Federal exploration* prior to development." (Federal Appellants Brief, p. 40). What Federal appellants failed to state however, is that the alternative of *Federal exploration* is clearly separate and distinct, and indeed has so been considered by Interior, from the alternative of *separation of exploration from production*. In short, appellants go to some length to compare apples and oranges.

Let us instead examine the relevant record:

a) The Government witness Judith Gresham freely admitted that neither the separation alternative analysis nor its cost and benefits were even seriously considered by the BLM office in New York City (Trial Tr. 768-769, JA 1699-1700). It should be noted that it was this office which coordinated all Sale 40 leasing activities and prepared the EIS documents themselves.

b) The failure to consider the separation alternative was done in the face of 13 public comments on the EIS 40 including those of New York, New Jersey, Delaware and Maryland, all of which recommended that exploration and production phases be separated.

c) In spite of these well considered and reasoned comments, the body of the final EIS 40 was silent on the issue save for a few lines of response to comments on the draft which summarily dismissed the separation issue (FES Vol. III p. 67).

d) The alternative of *Government exploration* is mentioned briefly at Vol. II p. 582-3, but as Justice Weinstein properly points out:

"There is no attempt to measure the government's potential exploration costs against the value of the information that exploration would reveal, especially if oil and gas are found. The conclusory statements concerning the cost effectiveness of the present system are undocumented and probably inaccurate. Furthermore, there is no discussion of the possibility that the government could assume only part-interest in an exploratory effort, or of the complimentary reform of requiring companies in the bidding process to provide so-called 'proprietary' information concerning potential reserves.

We need not speculate that the exploration-before-leasing discussion in the Environmental Impact Statement was mere window dressing. Mrs. Gresham's testimony demonstrated that this was the case. Like so much else in the NEPA documents, the material is presented to make it appear as if a candid analysis has taken place, designed to assist the public and decision makers, when in fact the decision on the issue has already been made." (Dec. pp. 62-63, JA 85-86)

In direct response to Federal defendants' argument that the Secretary has no obligation to consider the separation alternative because it is "not possible under the OCS Lands Act of 1953" to separate exploration from production, this Court is simply and respectfully referred to 40 CFR § 1500.8(a)(4) which states conclusively that "Alter-

natives to the proposed action, including, where relevant, those *not within the existing authority of the responsible agency*" must be analyzed and discussed in EIS. The Government's argument is clearly founded upon a misbelief and misunderstanding of the requirements of NEPA, that, since the separation of exploration from production might require further Congressional action, the Secretary has no obligation to consider it as a viable alternative to the proposed action. The decision rendered in *NRDC v. Morton*, 458 F.2d 827, places this argument in proper perspective when, analyzing the adequacy of an impact statement regarding another proposed OCS sale, it stated at page 835:

"While the Department of the Interior does not have the authority to eliminate or reduce oil import quotas, *such action is within the purview of both Congress and the President, to whom the impact statement goes. The impact statement is not only for the exposition of the thinking of the agency, but also for the guidance of these ultimate decision-makers, and must provide them with the environmental effects of both the proposal and the alternatives, for their consideration along with the various other elements of the public interest.*" (Emphasis supplied).

The Court continued at page 836:

"We reiterate that the discussion of environmental effects of alternatives need not be exhaustive. What is required is information sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned. As to alternatives not within the scope of authority of the responsible official, reference may of course be made to studies of other agencies—including other impact statements. *Nor is it appropriate, as Government counsel argues, to disregard alternatives merely because they do not offer a complete solution to the problem. If an alternative would result*

in supplying only part of the energy that the lease sale would yield, then its use might possibly reduce the scope of the lease sale program and thus alleviate a significant portion of the environmental harm attendant on offshore drilling." (Emphasis supplied).

And at page 837:

"The mere fact that an alternative requires legislative implementation *does not automatically establish it as beyond the domain of what is required for discussion*, particularly since NEPA was intended to provide a basis for consideration and choice by the decision-makers in the legislative as well as the executive branch." (Emphasis supplied).

Finally, the Court of Appeals here held that "it is the essence and thrust of NEPA that the pertinent statement serve to gather in *one place*" (not in a PDOD, which is not only not subject to the public scrutiny provisions of NEPA, but was begrudgingly provided by the Secretary) "a discussion of the relative environmental impact of alternatives."

Appellants' reference to the language at pages 837-38 of *NRDC v. Morton*, 458 F.2d 827, is easily distinguishable since the separation alternative, by any definition, is clearly not "remote or speculative" and therefore falls squarely within the "rule of reason" cited therein. In short, no other general NEPA requirement has been received more favorably by the appellate courts than that which prescribes "a detailed statement" and adequate consideration of "alternatives to the proposed action." 42 USC § 4332. *Natural Resources Defense Council v. Calloway*, 524 F.2d 79, 92 (2d Cir. 1975); *Chelsea Neighborhood Association v. U.S. Postal Service*, 516 F.2d 378, 386-88 (2d Cir. 1975); *Monroe County Conservation Society v. Volpe*, 472 F.2d 693, 697-98 (2d Cir. 1972); *Natural Resources Defense Council v. Morton*, 388 F. Supp. 829, 834 (D.D.C. 1974),

aff'd, 527 F.2d 1386 (D.C. Cir. 1976); *Calvert Cliffs' Coordinating Committee v. A.E.C.*, 449 F.2d 1109, 1114 (D.C. Cir. 1971). See also, Council on Environmental Quality Guidelines, 40 C.F.R. §1500.8(a)(4).

It was specifically held by this Court in *NRDC v. Calloway*, 524 F.2d 79 at 92-93:

"It is absolutely essential to the NEPA process that the decisionmaker be provided with a *detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as 'the linchpin of the entire impact statement,' Monroe County Conservation Society v. Volpe*, 472 F.2d at 697-98. Indeed the development and discussion of a wide range of alternatives to any proposed federal action is so important that it is mandated by NEPA when any proposal 'involves unresolved conflicts concerning alternative uses of available resources,' 42 U.S.C. §4332(2)(D). (Emphasis supplied).

The importance of a "detailed" statement and analysis of reasonable alternatives has been well illustrated by the 1st Circuit in *Silva v. Lynn*, 482 F.2d 1282 at 1284-5: "Finally and perhaps most substantively the requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticisms from being swept under the rug." (In accord, *Chelsea Neighborhood Association v. U.S. Postal Service*, 516 F.2d 378, 386-89, 2d Cir. 1975).

Rather than deal with the comments on the separation issue in good faith, Interior blatantly "swept them under the rug." It has been held the responsibility of the courts to reverse such conduct where a decision was made ". . . without *individualized consideration* and balancing of environmental factors conducted fully and in *good faith*." *Calvert Cliffs v. A.E.C.*, 449 F.2d 1109 at 1115 (D.C. Cir. 1971).

IV.

The Secretary's Cost Benefit Analysis of Sale 40 Was Grossly Defective, Inadequate and Violated NEPA and 40 CFR §1500.8(8)(a)(b).

Appellants' argument that Justice Weinstein's review of "The cost benefit analysis purportedly required by NEPA was based not on consideration of environmental consequences but strictly on economics" (Federal Appellants Brief, p. 44) again completely misconstrues and misapplies applicable NEPA case law and the provisions of 40 CFR § 1500.8(8). In the *Mafla* decision cited by appellants, it was specifically held that

"NEPA does not demand that every federal decision be verified by reduction to mathematical absolutes for insertion into a precise formula." *'Nevertheless, an agency [must] search out, develop and follow procedures reasonably calculated to bring environmental factors to peer status with dollars and technology in their decision-making.'* We note that regulations promulgated by Interior and by the Bureau of Land Management require quantification of costs and benefits where possible." (Emphasis supplied) *Sierra Club v. Morton*, 510 F.2d 813 at 827; In accord *Sierra Club v. Lynn*, 502 F.2d 43 (5th Cir. 1974); See also 36 Fed. Reg. 1943 and 37 Fed. Reg. 15018.

NEPA § 102(2)(C)(IV) has been held to require that such cost benefit analysis be made in good faith. *Calvert Cliffs v. A.E.C.*, *supra*; *EDF v. Corps of Engineers*, *supra*; *Trout Unlimited v. Morton*, 509 F.2d 1276. The lower court here found that, based upon the credible and uncontroverted testimony of George Donkin, the Secretary in fact:

- 1) underestimated oil and gas finding costs;
- 2) underestimated pipeline construction costs;

3) underestimated total required investment costs;

4) overstated peak levels of production (Dec. 43-56, JA 65-78). Rather than restate and analyze Donkin's expert testimony on these points, this Court is respectfully referred to Trial Tr. pp. 1050-57, 1059-1062, 1068-1072, 1073-82 as well as the Brief filed herein by the County of Suffolk.

Justice Weinstein has already responded directly to and has answered appellants' argument thusly:

"The Secretary's cost benefit analysis is vitally linked to critical NEPA issues. Its relevance to the tanker-pipeline issue has previously been alluded to, and its connection to other environmental impact issues is also clear. *If the Secretary has grossly understated the investment costs and overstated the daily production rates and reserves, then the timing, locations, size and number of pipelines, drilling wells and duration of construction may differ from the Secretary's projections, with resultant environmental and socio-economic impacts (offshore and onshore) qualitatively and quantitatively different from those estimated in the NEPA documents.*" (Emphasis supplied) (Dec. p. 57 JA 79)

CEQ Guidelines

In light of the uncontroverted fact that Interior prepared an economic cost benefit analysis of Sale 40, albeit defective, and secreted it entirely within the PDOD, in a transparent effort to place it beyond the public scrutiny of the EIS document, 40 CFR §1500.8(8) is particularly applicable:

"In this connection, *agencies that prepare cost-benefit analyses of proposed actions should attach such analyses or summaries thereof, to the environmental impact statement, and should clearly indicate the extent to which environmental costs have not been reflected in such analyses.*"

"If such information is attached to the statement, care should be taken to ensure that the statement remains an *essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference.*" (Emphasis supplied)

It is submitted that the Secretary, by admittedly failing to attach said cost benefit analysis or summary thereof to the EIS 40, has specifically and deliberately violated the above provisions. This Court is respectfully reminded that the PDOD, under the convenient guise and labeling as an internal document, was begrudgingly provided to appellees only after a formal motion was made for its release and limited publication. To argue on the one hand that the PDOD is not a NEPA document and is therefore not subject to the public scrutiny provisions of that law, and on the other that its contents, and specifically its cost benefit analysis, somehow satisfy the requirements of NEPA, is patently inconsistent and irresponsible. Appellants have yet to address this alleged violation of 40 CFR §1500.8(8).

In direct and brief response to appellants' argument that Justice Weinstein erred in accepting "de novo" testimony on the cost benefit issue, it is simply submitted that Donkin's testimony with respect to the underestimation of pipeline construction costs and total investment cost required, were clearly derived from current Federal Power Commission figures (Trial Tr. 1059-1062, 1068-1072) all of which were available to the Secretary prior to the preparation of EIS 40. In short, these investment and pipeline figures were current, accurate and available yet were *omitted* and *ignored* by the Secretary. Thus, the issue is not a question of simple disagreement of facts or one of substituting the Secretary's findings and conclusions with that of another expert. Clearly the lower court did not "... interject itself within the area of discretion of the executive as to the choice of the actions to be taken." *NRDC v. Morton*, 458 F. 2d 827, at 838. Neither the NRDC decision nor *Kleppe v.*

Sierra Club, 427 U.S. 390, nor *Hudson Preservation Conference v. FPC*, 453 F. 2d 463 is even remotely applicable where the lower court clearly did not substitute its judgment for that of the agency.

In a decision cited by appellants in support of the argument that a court may only conduct a review by examining an existing record before that agency (*Camp v. Pitts*, 411 U.S. 138) it was held, under a narrow application of the APA, that the remand instructions of the Court of Appeals to make a de novo evidentiary record were improper. The case is easily distinguishable in that the controlling statute did not require the Comptroller for the Currency to conduct hearings on an application for a new bank. There was no available record in that case. Here instead, there is an extensive record of administrative hearings. The case at bar involves not only APA, but significant NEPA claims and issues. It clearly does not involve the "putting aside" of an administrative record or of substituting a judgment of an administrator.

In another case cited by appellants, *Dunlop v. Bachowski*, 421 U.S. 560, 1975, again a narrow APA issue was decided. It was held that while the factual bases for the Secretary's conclusions must normally not be reviewable, they may however be challenged where the decision, as here, was found to be irrational or without a "defensible basis" in light of the evidence.

As Justice Weinstein aptly pointed out at page 58 of his decision:

"Where, as here, the economic costs and benefits of the planned action were seriously and grossly *misrepresented or omitted*, there could be no adequate balancing of economic benefits against environmental costs. *It should be emphasized that the discrepancies are so substantial that they cannot be attributed to mere differences in judgment. They were so inadequate as to constitute, for NEPA purposes, a failure to make*

a meaningful inquiry. As a result, the Secretary's decision on Sale 40 was in this respect arbitrary and capricious and in violation of NEPA." (Emphasis supplied)

CONCLUSION

It is respectfully submitted that the decision and final order of the District Court is proper in all respects and should therefore be affirmed in toto.

Respectfully submitted,

WILLIAM GITELMAN
County Attorney of Nassau County
Attorney for Appellee County of Nassau
Nassau County Executive Building
Mineola, N.Y. 11501

JOHN F. PICCIANO
Deputy County Attorney
of Counsel

APPENDIX A

Council on Environmental Quality

General NEPA Guidelines

Title 40—Protection of the Environment

CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

PART 1500—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS: GUIDELINES

On May 2, 1973, the Council on Environmental Quality published in the *FEDERAL REGISTER*, for public comment, a proposed revision of its guidelines for the preparation of environmental impact statements. Pursuant to the National Environmental Policy Act (P.L. 91-190, 42 U.S.C. 4321 et seq.) and Executive Order 11514 (35 FR 4247) all Federal departments, agencies, and establishments are required to prepare such statements in connection with their proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The authority for the Council's guidelines is set forth below in § 1500.1. The specific policies to be implemented by the guidelines is set forth below in § 1500.2.

The Council received numerous comments on its proposed guidelines from environmental groups, Federal, State, and local agencies, industry, and private individuals. Two general themes were presented in the majority of the comments. First, the Council should increase the opportunity for public involvement in the impact statement process. Second, the Council should provide more detailed guidance on the responsibilities of Federal agencies in light of recent court decisions interpreting the Act. The proposed guidelines have been revised in light of the specific comments relating to these general themes, as well as other comments received, and are now being issued in final form.

The guidelines will appear in the Code of Federal Regulations in Title 40, Chapter V, at Part 1500. They are being codified, in part, because they affect State and local governmental agencies, environmental groups, industry, and private individuals, in addition to Federal agencies, to which they are specifically directed, and the resultant need to make them widely and readily available.

Sec.

- 1500.1 Purpose and authority.
- 1500.2 Policy.
- 1500.3 Agency and OMB procedures.
- 1500.4 Federal agencies included; effect of the act on existing agency mandates.

Sec.

- 1500.5 Types of actions covered by the act.
- 1500.6 Identifying major actions significantly affecting the environment.
- 1500.7 Preparing draft environmental statements; public hearings.
- 1500.8 Content of environmental statements.
- 1500.9 Review of draft environmental statements by Federal, Federal-State, and local agencies and by the public.
- 1500.10 Preparation and circulation of final environmental statements.
- 1500.11 Transmittal of statements to the Council; minimum periods for review; requests by the Council.
- 1500.12 Legislative actions.
- 1500.13 Application of section 102(2)(C) procedure to existing projects and programs.
- 1500.14 Supplementary guidelines; evaluation of procedures.

Appendix I Summary to accompany draft and final statements.

Appendix II Areas of environmental impact and Federal agencies and Federal State agencies with jurisdiction by law or special expertise to comment thereon.

Appendix III Offices within Federal agencies and Federal-State agencies for information regarding the agencies' NEPA activities and for receiving other agencies' impact statements for which comments are requested.

Appendix IV State and local agency review of impact statements.

AUTHORITY: National Environmental Policy Act (P.L. 91-190, 42 U.S.C. 4321 et seq.) and Executive Order 11514.

§ 1500.1 Purpose and authority.

(a) This directive provides guidelines to Federal departments, agencies, and establishments for preparing detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment as required by section 102(2)(C) of the National Environmental Policy Act (P.L. 91-190, 42 U.S.C. 4321 et seq.) (hereafter "the Act"). Underlying the preparation of such environmental statements is the mandate of both the Act and Executive Order 11514 (35 FR 4247) of March 5, 1970, that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs to protect and enhance environmental quality. Agencies are required to view their actions in a manner calculated to encourage productive and enjoyable harmony between man and his environment, to promote

efforts preventing or eliminating damage to the environment and biosphere and stimulating the health and welfare of man, and to enrich the understanding of the ecological systems and natural resources important to the Nation. The objective of section 102(2)(C) of the Act and of these guidelines is to assist agencies in implementing these policies. This requires agencies to build into their decisionmaking process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed action in order that adverse environmental effects may be avoided or minimized and environmental quality previously lost may be restored. This directive also provides guidance to Federal, State, and local agencies and the public in commenting on statements prepared under these guidelines.

(b) Pursuant to section 204(3) of the Act the Council on Environmental Quality (hereafter "the Council") is assigned the duty and function of reviewing and appraising the programs and activities of the Federal Government, in the light of the Act's policy, for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto. Section 102(2)(B) of the Act directs all Federal agencies to identify and develop methods and procedures, in consultation with the Council, to insure that unquantified environmental values be given appropriate consideration in decisionmaking along with economic and technical considerations; section 102(2)(C) of the Act directs that copies of all environmental impact statements be filed with the Council; and section 102(2)(H) directs all Federal agencies to assist the Council in the performance of its functions. These provisions have been supplemented in sections 3(h) and (i) of Executive Order 11514 by directions that the Council issue guidelines to Federal agencies for preparation of environmental impact statements and such other instructions to agencies and requests for reports and information as may be required to carry out the Council's responsibilities under the Act.

§ 1500.2 Policy.

(a) As early as possible and in all cases prior to agency decision concerning rec-

ommendations or favorable reports on proposals for (1) legislation significantly affecting the quality of the human environment (see §§ 1500.5(i) and 1500.12) (hereafter "legislative actions") and (2) all other major Federal actions significantly affecting the quality of the human environment (hereafter "administrative actions"). Federal agencies will, in consultation with other appropriate Federal, State and local agencies and the public assess in detail the potential environmental impact.

(b) Initial assessments of the environmental impacts of proposed action should be undertaken concurrently with initial technical and economic studies and, where required, a draft environmental impact statement prepared and circulated for comment in time to accompany the proposal through the existing agency review processes for such action. In this process, Federal agencies shall:

- (1) Provide for circulation of draft environmental statements to other Federal, State, and local agencies and for their availability to the public in accordance with the provisions of these guidelines;
- (2) consider the comments of the agencies and the public; and
- (3) issue final environmental impact statements responsive to the comments received. The purpose of this assessment and consultation process is to provide agencies and other decisionmakers as well as members of the public with an understanding of the potential environmental effects of proposed actions, to avoid or minimize adverse effects wherever possible, and to restore or enhance environmental quality to the fullest extent practicable. In particular, agencies should use the environmental impact statement process to explore alternative actions that will avoid or minimize adverse impacts and to evaluate both the long- and short-range implications of proposed actions to man, his physical and social surroundings, and to nature. Agencies should consider the results of their environmental assessments along with their assessments of the net economic, technical and other benefits of proposed actions and use all practicable means, consistent with other essential considerations of national policy, to restore environmental quality as well as to avoid or minimize undesirable consequences for the environment.

§ 1500.3 Agency and OMB procedures.

(a) Pursuant to section 2(f) of Executive Order 11514, the heads of Federal agencies have been directed to proceed with measures required by section 102 (2)(C) of the Act. Previous guidelines of the Council directed each agency to establish its own formal procedures for (1) identifying those agency actions requiring environmental statements, the appropriate time prior to decision for the consultations required by section 102 (2)(C) and the agency review process for which environmental statements are to be available, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State and local agencies and the public, including obtaining the comment of the Administrator of the Environmental Protection Agency when required under

section 309 of the Clean Air Act, as amended, and (5) meeting the requirements of section 2(b) of Executive Order 11514 for providing timely public information on Federal plans and programs with environmental impact. Each agency, including both departmental and sub-departmental components having such procedures, shall review its procedures and shall revise them, in consultation with the Council, as may be necessary in order to respond to requirements imposed by these revised guidelines as well as by such previous directives. After such consultation, proposed revisions of such agency procedures shall be published in the FEDERAL REGISTER no later than October 30, 1973. A minimum 45-day period for public comment shall be provided, followed by publication of final procedures no later than forty-five (45) days after the conclusion of the comment period. Each agency shall submit seven (7) copies of all such procedures to the Council. Any future revision of such agency procedures shall similarly be proposed and adopted only after prior consultation with the Council and, in the case of substantial revision, opportunity for public comment. All revisions shall be published in the FEDERAL REGISTER.

(b) Each Federal agency should consult, with the assistance of the Council and the Office of Management and Budget if desired, with other appropriate Federal agencies in the development and revision of the above procedures so as to achieve consistency in dealing with similar activities and to assure effective coordination among agencies in their review of proposed activities. Where applicable, State and local review of such agency procedures should be conducted pursuant to procedures established by Office of Management and Budget Circular No. A-85.

(c) Existing mechanisms for obtaining the views of Federal, State, and local agencies on proposed Federal actions should be utilized to the maximum extent practicable in dealing with environmental matters. The Office of Management and Budget will issue instructions, as necessary, to take full advantage of such existing mechanisms.

§ 1500.4 Federal agencies included; effect of the Act on existing agency mandates.

(a) Section 102(2)(C) of the Act applies to all agencies of the Federal Government. Section 102 of the Act provides that "to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act," and section 105 of the Act provides that "the policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies." This means that each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. In accordance with this purpose, agencies should continue to review their policies, procedures, and regulations and to revise them as necessary to ensure full compliance with the purposes and pro-

visions of the Act. The phrase "to the fullest extent possible" in section 102 is meant to make clear that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

§ 1500.5 Types of actions covered by the Act.

(a) "Actions" include but are not limited to:

(1) Recommendations or favorable reports relating to legislation including requests for appropriations. The requirement for following the section 102 (2)(C) procedure as elaborated in these guidelines applies to both (i) agency recommendations on their own proposals for legislation (see § 1500.12); and (ii) agency reports on legislation initiated elsewhere. In the latter case only the agency which has primary responsibility for the subject matter involved will prepare an environmental statement.

(2) New and continuing projects and program activities: directly undertaken by Federal agencies; or supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance (except where such assistance is solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et. seq. with no Federal agency control over the subsequent use of such funds); or involving a Federal lease, permit, license certificate or other entitlement for use.

(3) The making, modification, or establishment of regulations, rules, procedures, and policy.

§ 1500.6 Identifying major actions significantly affecting the environment.

(a) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed by agencies with a view to the overall, cumulative impact of the action proposed, related Federal actions and projects in the area, and further actions contemplated. Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases. In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action, or when several Government agencies individually make decisions about partial aspects of a major action. In all such cases, an environmental statement should be prepared if it is reasonable to anticipate a cumulatively significant impact on the environment from Federal action. The Council, on the

basis of a written assessment of the impacts involved, is available to assist agencies in determining whether specific actions require impact statements.

(b) Section 101(b) of the Act indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment, and serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. Significant effects also include secondary effects, as described more fully, for example, in § 1500.8(a)(iii)(B). The significance of a proposed action may also vary with the setting, with the result that an action that would have little impact in an urban area may be significant in a rural setting or vice versa. While a precise definition of environmental "significance," valid in all contexts, is not possible, effects to be considered in assessing significance include, but are not limited to, those outlined in Appendix II of these guidelines.

(c) Each of the provisions of the Act, except section 102(2)(C), applies to all Federal agency actions. Section 102(2)(C) requires the preparation of a detailed environmental impact statement in the case of "major Federal actions significantly affecting the quality of the human environment." The identification of major actions significantly affecting the environment is the responsibility of each Federal agency, to be carried out against the background of its own particular operations. The action must be a (1) "major" action, (2) which is a "Federal action," (3) which has a "significant" effect, and (4) which involves the "quality of the human environment." The words "major" and "significantly" are intended to imply thresholds of importance and impact that must be met before a statement is required. The action causing the impact must also be one where there is sufficient Federal control and responsibility to constitute "Federal action" in contrast to cases where such Federal control and responsibility are not present as, for example, when Federal funds are distributed in the form of general revenue sharing to be used by State and local governments (see § 1500.5(ii)). Finally, the action must be one that significantly affects the quality of the human environment either by directly affecting human beings or by indirectly affecting human beings through adverse effects on the environment. Each agency should review the typical classes of actions that it undertakes and, in consultation with the Council, should develop specific criteria and methods for identifying those actions likely to require environmental statements and those actions likely not to require environmental statements. Normally this will involve:

(i) Making an initial assessment of the environmental impacts typically associated with principal types of agency action.

(ii) Identifying on the basis of this assessment, types of actions which normally do, and types of actions which normally do not, require statements.

(iii) With respect to remaining actions that may require statements depending on the circumstances, and those actions determined under the preceding paragraph (C)(4)(iii) of this section as likely to require statements, identifying: (a) what basic information needs to be gathered; (b) how and when such information is to be assembled and analyzed; and (c) on what bases environmental assessments and decisions to prepare impact statements will be made. Agencies may either include this substantive guidance in the procedures issued pursuant to § 1500.3(a) of these guidelines, or issue such guidance as supplemental instructions to aid relevant agency personnel in implementing the impact statement process. Pursuant to § 1500.14 of these guidelines, agencies shall report to the Council by June 30, 1974, on the progress made in developing such substantive guidance.

(d) (1) Agencies should give careful attention to identifying and defining the purpose and scope of the action which would most appropriately serve as the subject of the statement. In many cases, broad program statements will be required in order to assess the environmental effects of a number of individual actions on a given geographical area (e.g., coal leases), or environmental impacts that are generic or common to a series of agency actions (e.g., maintenance or waste handling practices), or the overall impact of a large-scale program or chain of contemplated projects (e.g., major lengths of highway as opposed to small segments). Subsequent statements on major individual actions will be necessary where such actions have significant environmental impacts not adequately evaluated in the program statement.

(2) Agencies engaging in major technology research and development programs should develop procedures for periodic evaluation to determine when a program statement is required for such programs. Factors to be considered in making this determination include the magnitude of Federal investment in the program, the likelihood of widespread application of the technology, the degree of environmental impact which would occur if the technology were widely applied, and the extent to which continued investment in the new technology is likely to restrict future alternatives. Statements must be written late enough in the development process to contain meaningful information, but early enough so that this information can practically serve as an input in the decision-making process. Where it is anticipated that a statement may ultimately be required but that its preparation is still premature, the agency should prepare an evaluation briefly setting forth the reasons for its determination that a statement is not yet necessary. This evaluation should be periodically updated, particularly when significant new information becomes available concerning the potential environmental impact of the program. In any case, a statement must be prepared before research activities have reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives. Statements on technology research and development programs should include an analysis not

only of alternative forms of the same technology that might reduce any adverse environmental impacts but also of alternative technologies that would serve the same function as the technology under consideration. Efforts should be made to involve other Federal agencies and interested groups with relevant expertise in the preparation of such statements because the impacts and alternatives to be considered are likely to be less well defined than in other types of statements.

(e) In accordance with the policy of the Act and Executive Order 11514 agencies have a responsibility to develop procedures to insure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. In furtherance of this policy, agency procedures should include an appropriate early notice system for informing the public of the decision to prepare a draft environmental statement on proposed administrative actions (and for soliciting comments that may be helpful in preparing the statement) as soon as is practicable after the decision to prepare the statement is made. In this connection, agencies should: (1) maintain a list of administrative actions for which environmental statements are being prepared; (2) revise the list at regular intervals specified in the agency's procedures developed pursuant to § 1500.3(a) of these guidelines (but not less than quarterly) and transmit each such revision to the Council; and (3) make the list available for public inspection on request. The Council will periodically publish such lists in the FEDERAL REGISTER. If an agency decides that an environmental statement is not necessary for a proposed action (i) which the agency has identified pursuant to § 1500.6(c)(4)(ii) as normally requiring preparation of a statement, (ii) which is similar to actions for which the agency has prepared a significant number of statements, (iii) which the agency has previously announced would be the subject of a statement, or (iv) for which the agency has made a negative determination in response to a request from the Council pursuant to § 1500.11(f), the agency shall prepare a publicly available record briefly setting forth the agency's decision and the reasons for that determination. Lists of such negative determinations, and any evaluations made pursuant to § 1500.6 which conclude that preparation of a statement is not yet timely, shall be prepared and made available in the same manner as provided in this subsection for lists of statements under preparation.

§ 1500.7 Preparing draft environmental statements; public hearings.

(a) Each environmental impact statement shall be prepared and circulated in draft form for comment in accordance with the provisions of these guidelines. The draft statement must fulfill and satisfy to the fullest extent possible at the time the draft is prepared the requirements established for final statements by section 102(2)(C). (Where an agency has an established practice of declining to favor an alternative until public comments on a proposed action have been received, the draft environ-

mental statement may indicate that two or more alternatives are under consideration.) Comments received shall be carefully evaluated and considered in the decision process. A final statement with substantive comments attached shall then be issued and circulated in accordance with applicable provisions of §§ 1500.10, 1500.11, or 1500.12. It is important that draft environmental statements be prepared and circulated for comment and furnished to the Council as early as possible in the agency review process in order to permit agency decisionmakers and outside reviewers to give meaningful consideration to the environmental issues involved. In particular, agencies should keep in mind that such statements are to serve as the means of assessing the environmental impact of proposed agency actions, rather than as a justification for decisions already made. This means that draft statements on administrative actions should be prepared and circulated for comment prior to the first significant point of decision in the agency review process. For major categories of agency action, this point should be identified in the procedures issued pursuant to § 1500.3(a). For major categories of projects involving an applicant and identified pursuant to § 1500.6 (c)(c)(ii) as normally requiring the preparation of a statement, agencies should include in their procedures provisions limiting actions which an applicant is permitted to take prior to completion and review of the final statement with respect to his application.

(b) Where more than one agency (1) directly sponsors an action, or is directly involved in an action through funding, licenses, or permits, or (2) is involved in a group of actions directly related to each other because of their functional interdependence and geographical proximity, consideration should be given to preparing one statement for all the Federal actions involved (see § 1500.6(d)(1)). Agencies in such cases should consider the possibility of joint preparation of a statement by all agencies concerned, or designation of a single "lead agency" to assume supervisory responsibility for preparation of the statement. Where a lead agency prepares the statement, the other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. In either case, the statement should contain an environmental assessment of the full range of Federal actions involved, should reflect the views of all participating agencies, and should be prepared before major or irreversible actions have been taken by any of the participating agencies. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the project's environmental effects. As necessary, the Council will assist in resolving questions of responsibility for statement preparation in the case of multi-agency actions. Federal Regional Councils, agencies and the public are encouraged to bring to the attention of the Council and other relevant agencies appropriate situations where a geographic or regionally focused statement would be desirable because of the cumulative environmental effects,

likely to result from multi-agency actions in the area.

(c) Where an agency relies on an applicant to submit initial environmental information, the agency should assist the applicant by outlining the types of information required. In all cases, the agency should make its own evaluation of the environmental issues and take responsibility for the scope and content of draft and final environmental statements.

(d) Agency procedures developed pursuant to § 1500.3(a) of these guidelines should indicate as explicitly as possible those types of agency decisions or actions which utilize hearings as part of the normal agency review process, either as a result of statutory requirement or agency practice. To the fullest extent possible, all such hearings shall include consideration of the environmental aspects of the proposed action. Agency procedures shall also specifically include provision for public hearings on major actions with environmental impact, whenever appropriate, and for providing the public with relevant information, including information on alternative courses of action. In deciding whether a public hearing is appropriate, an agency should consider: (1) The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of the resources involved; (2) the degree of interest in the proposal, as evidenced by requests from the public and from Federal, State and local authorities that a hearing be held; (3) the complexity of the issue and the likelihood that information will be presented at the hearing which will be of assistance to the agency in fulfilling its responsibilities under the Act; and (4) the extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action. Agencies should make any draft environmental statements to be issued available to the public at least fifteen (15) days prior to the time of such hearings.

§ 1500.3 Content of environmental statements.

(a) The following points are to be covered:

(1) A description of the proposed action, a statement of its purposes, and a description of the environment affected, including information, summary technical data, and maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact by commenting agencies and the public. Highly technical and specialized analyses and data should be avoided in the body of the draft impact statement. Such materials should be attached as appendices or footnoted with adequate bibliographic references. The statement should also succinctly describe the environment of the area affected as it exists prior to a proposed action, including other Federal activities in the area affected by the proposed action which are related to the proposed action. The interrelationships and cumulative environmental impacts of the proposed action and other related Federal projects shall be presented in the statement. The amount of detail provided in such de-

scriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decisionmaking (planning, feasibility, design, etc.). In order to ensure accurate descriptions and environmental assessments, site visits should be made where feasible. Agencies should also take care to identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives (see paragraph (a)(1)(3)(ii), of this section). In discussing these population aspects, agencies should give consideration to using the rates of growth in the region of the project contained in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture (the "OBERS" projection). In any event it is essential that the sources of data used to identify, quantify or evaluate any and all environmental consequences be expressly noted.

(2) The relationship of the proposed action to land use plans, policies, and controls for the affected area. This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State, and local land use plans, policies, and controls, if any, for the area affected including those developed in response to the Clean Air Act or the Federal Water Pollution Control Act Amendments of 1972. Where a conflict or inconsistency exists, the statement should describe the extent to which the agency has reconciled its proposed action with the plan, policy or control, and the reasons why the agency has decided to proceed notwithstanding the absence of full reconciliation.

(3) The probable impact of the proposed action on the environment.

(i) This requires agencies to assess the positive and negative effects of the proposed action as it affects both the national and international environment. The attention given to different environmental factors will vary according to the nature, scale, and location of proposed actions. Among factors to consider should be the potential effect of the action on such aspects of the environment as those listed in Appendix II of these guidelines. Primary attention should be given in the statement to discussing those factors most evidently impacted by the proposed action.

(ii) Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis. Many major Federal actions, in particular those that involve the construction or licensing of infrastructure investments (e.g., highways, airports, sewer systems, water resource projects, etc.), stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, through their impacts on existing community facilities and activities, through inducing new facilities and ac-

tivities, or through changes in natural conditions, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated if expected to be significant (using data identified as indicated in § 1500.8(a)(1)) and an assessment made of the effect of any possible change in population patterns or growth upon the resource base, including land use, water, and public services, of the area in question.

(4) Alternatives to the proposed action, including, where relevant, those not within the existing authority of the responsible agency. (Section 102(2)(D) of the Act requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, is essential. Sufficient analysis of such alternatives and their environmental benefits, costs and risks should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of taking no action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts (e.g., nonstructural alternatives to flood control programs, or mass transit alternatives to highway construction); alternatives related to different designs or details of the proposed action which would present different environmental impacts (e.g., cooling ponds vs. cooling towers for a power plant or alternatives that will significantly conserve energy); alternative measures to provide for compensation of fish and wildlife losses, including the acquisition of land, waters, and interests therein. In each case, the analysis should be sufficiently detailed to reveal the agency's comparative evaluation of the environmental benefits, costs and risks of the proposed action and each reasonable alternative. Where an existing impact statement already contains such an analysis, its treatment of alternatives may be incorporated provided that such treatment is current and relevant to the precise purpose of the proposed action.

(5) Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) of the Act). This should be a brief section summarizing in one place those effects discussed in paragraph (a)(3) of this section that are adverse and unavoidable under the proposed action. Included for purposes of contrast should be a clear statement of how other avoid-

able adverse effects discussed in paragraph (a)(2) of this section will be mitigated.

(6) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This section should contain a brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options. In this context short-term and long-term do not refer to any fixed time periods, but should be viewed in terms of the environmentally significant consequences of the proposed action.

(7) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This requires the agency to identify from its survey of unavoidable impacts in paragraph (a)(5) of this section the extent to which the action irreversibly curtails the range of potential uses of the environment. Agencies should avoid constraining the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.

(8) An indication of what other interests and considerations of Federal policy are thought to offset the adverse environmental effects of the proposed action identified pursuant to paragraphs (a)(3) and (5) of this section. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action (as identified in paragraph (a)(4) of this section) that would avoid some or all of the adverse environmental effects. In this connection, agencies that prepare cost-benefit analyses of proposed actions should attach such analyses, or summaries thereof, to the environmental impact statement, and should clearly indicate the extent to which environmental costs have not been reflected in such analyses.

(b) In developing the above points agencies should make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decisionmakers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement. Each of the above points, for example, need not always occupy a distinct section of the statement if it is otherwise adequately covered in discussing the impact of the proposed action and its alternatives—which items should normally be the focus of the statement. Draft statements should indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered by the agency in preparing the statement including any cost-benefit analyses prepared by the agency, and reports of consulting agencies under the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., and the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., where such consultation has taken place. In the case of documents not likely to be easily ac-

cessible (such as internal studies or reports), the agency should indicate how such information may be obtained. If such information is attached to the statement, care should be taken to ensure that the statement remains an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference.

(c) Each environmental statement should be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." Agencies should attempt to have relevant disciplines represented on their own staffs; where this is not feasible they should make appropriate use of relevant Federal, State, and local agencies or the professional services of universities and outside consultants. The interdisciplinary approach should not be limited to the preparation of the environmental impact statement, but should also be used in the early planning stages of the proposed action. Early application of such an approach should help assure a systematic evaluation of reasonable alternative courses of action and their potential social, economic, and environmental consequences.

(d) Appendix I prescribes the form of the summary sheet which should accompany each draft and final environmental statement.

§ 1500.9 Review of draft environmental statements by Federal, Federal-State, State, and local agencies and by the public.

(a) *Federal agency review.* (1) *In general.* A Federal agency considering an action requiring an environmental statement should consult with, and (on the basis of a draft environmental statement for which the agency takes responsibility) obtain the comment on the environmental impact of the action of Federal and Federal-State agencies with jurisdiction by law or special expertise with respect to any environmental impact involved. These Federal and Federal-State agencies and their relevant areas of expertise include those identified in Appendices II and III to these guidelines. It is recommended that the listed departments and agencies establish contact points, which may be regional offices, for providing comments on the environmental statements. The requirement in section 102(2)(C) to obtain comment from Federal agencies having jurisdiction or special expertise is in addition to any specific statutory obligation of any Federal agency to coordinate or consult with any other Federal or State agency. Agencies should, for example, be alert to consultation requirements of the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., and the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq. To the extent possible, statements or findings concerning environmental impact required by other statutes, such as section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 1653(f), or

section 106 of the National Historic Preservation Act of 1966, should be combined with compliance with the environmental impact statement requirements of section 102(2)(C) of the Act to yield a single document which meets all applicable requirements. The Advisory Council on Historic Preservation, the Department of Transportation, and the Department of the Interior, in consultation with the Council, will issue any necessary supplementing instructions for furnishing information or findings not forthcoming under the environmental impact statement process.

(b) *EPA review.* Section 309 of the Clean Air Act, as amended (42 U.S.C. § 1857h-7), provides that the Administrator of the Environmental Protection Agency shall comment in writing on the environmental impact of any matter relating to his duties and responsibilities, and shall refer to the Council any matter that the Administrator determines is unsatisfactory from the standpoint of public health or welfare or environmental quality. Accordingly, wherever an agency action related to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, generally applicable environmental radiation criteria and standards, or other provision of the authority of the Administrator is involved, Federal agencies are required to submit such proposed actions and their environmental impact statements, if such have been prepared, to the Administrator for review and comment in writing. In all cases where EPA determines that proposed agency action is environmentally unsatisfactory, or where EPA determines that an environmental statement is so inadequate that such a determination cannot be made, EPA shall publish its determination and notify the Council as soon as practicable. The Administrator's comments shall constitute his comments for the purposes of both section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act.

(c) *State and local review.* Office of Management and Budget Circular No. A-95 (Revised) through its system of State and areawide clearinghouses provides a means for securing the views of State and local environmental agencies, which can assist in the preparation and review of environmental impact statements. Current instructions for obtaining the views of such agencies are contained in the joint OMB-CEQ memorandum attached to these guidelines as Appendix IV. A current listing of clearinghouses is issued periodically by the Office of Management and Budget.

(d) *Public review.* The procedures established by these guidelines are designed to encourage public participation in the impact statement process at the earliest possible time. Agency procedures should make provision for facilitating the comment of public and private organizations and individuals by announcing the availability of draft environmental statements and by making copies available to organizations and individuals that request an opportunity to comment. Agencies should devise methods for publicizing the existence of draft statements, for example, by publication of notices in local newspapers or by maintaining a list of groups, including relevant conserva-

tion commissions, known to be interested in the agency's activities and directly notifying such groups of the existence of a draft statement, or sending them a copy, as soon as it has been prepared. A copy of the draft statement should in all cases be sent to any applicant whose project is the subject of the statement. Materials to be made available to the public shall be provided without charge to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including the Council.

(e) *Responsibilities of commenting entities.* (1) Agencies and members of the public submitting comments on proposed actions on the basis of draft environmental statements should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. Although the comments need not conform to any particular format, it would assist agencies reviewing comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the proposed action, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives to the action. Commenting entities may recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

(2) Commenting agencies should indicate whether any of their projects not identified in the draft statement are sufficiently advanced in planning and related environmentally to the proposed action so that a discussion of the environmental interrelationships should be included in the final statement (see § 1500.8(a)(1)). The Council is available to assist agencies in making such determinations.

(3) Agencies and members of the public should indicate in their comments the nature of any monitoring of the environmental effects of the proposed project that appears particularly appropriate. Such monitoring may be necessary during the construction, startup, or operation phases of the project. Agencies with special expertise with respect to the environmental impacts involved are encouraged to assist the sponsoring agency in the establishment and operation of appropriate environmental monitoring.

(f) Agencies seeking comment shall establish time limits of not less than forty-five (45) days for reply, after which it may be presumed, unless the agency or party consulted requests a specified extension of time, that the agency or party consulted has no comment to make. Agencies seeking comment should endeavor to comply with requests for extensions of time of up to fifteen (15) days. In determining an appropriate period for comment, agencies should consider the magnitude and complexity of the statement and the extent of citizen interest in the proposed action.

§ 1500.10 Preparation and circulation of final environmental statements.

(a) Agencies should make every effort to discover and discuss all major points of view on the environmental effects of the proposed action and its alternatives in the draft statement itself. However, where opposing professional views and responsible opinion have been overlooked in the draft statement and are brought to the agency's attention through the commenting process, the agency should review the environmental effects of the action in light of those views and should make a meaningful reference in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement, indicating the agency's response to the issues raised. All substantive comments received on the draft (or summaries thereof where response has been exceptionally voluminous) should be attached to the final statement, whether or not each such comment is thought to merit individual discussion by the agency in the text of the statement.

(b) Copies of final statements, with comments attached, shall be sent to all Federal, State, and local agencies and private organizations that made substantive comments on the draft statement and to individuals who requested a copy of the final statement, as well as any applicant whose project is the subject of the statement. Copies of final statements shall in all cases be sent to the Environmental Protection Agency to assist it in carrying out its responsibilities under section 309 of the Clean Air Act. Where the number of comments on a draft statement is such that distribution of the final statement to all commenting entities appears impracticable, the agency shall consult with the Council concerning alternative arrangements for distribution of the statement.

§ 1500.11 Transmittal of statements to the Council; minimum periods for review; requests by the Council.

(a) As soon as they have been prepared, ten (10) copies of draft environmental statements, five (5) copies of all comments made thereon (to be forwarded to the Council by the entity making comment at the time comment is forwarded to the responsible agency), and ten (10) copies of the final text of environmental statements (together with the substance of all comments received by the responsible agency from Federal, State, and local agencies and from private organizations and individuals) shall be supplied to the Council. This will serve to meet the statutory requirement to make environmental statements available to the President. At the same time that copies of draft and final statements are sent to the Council, copies should also be sent to relevant commenting entities as set forth in §§ 1500.9 and 1500.10(b) of these guidelines.

(b) To the maximum extent practicable no administrative action subject to section 102(2)(C) is to be taken sooner than ninety (90) days after a draft environmental statement has been circulated for comment, furnished to the Council and, except where advance public disclosure will result in significantly increased costs of procurement to the Government, made available to the public pursuant to these guidelines; neither should such administrative action be

taken sooner than thirty (30) days after the final text of an environmental statement (together with comments) has been made available to the Council, commenting agencies, and the public. In all cases, agencies should allot a sufficient review period for the final statement so as to comply with the statutory requirement that the "statement and the comments and views of appropriate Federal, State, and local agencies . . . accompany the proposal through the existing agency review processes." If the final text of an environmental statement is filed within ninety (90) days after a draft statement has been circulated for comment, furnished to the Council and made public pursuant to this section of these guidelines, the minimum thirty (30) day period and the ninety (90) day period may run concurrently to the extent that they overlap. An agency may at any time supplement or amend a draft or final environmental statement, particularly when substantial changes are made in the proposed action, or significant new information becomes available concerning its environmental aspects. In such cases the agency should consult with the Council with respect to the possible need for or desirability of recirculation of the statement for the appropriate period.

(c) The Council will publish weekly in the FEDERAL REGISTER lists of environmental statements received during the preceding week that are available for public comment. The date of publication of such lists shall be the date from which the minimum periods for review and advance availability of statements shall be calculated.

(d) The Council's publication of notice of the availability of statements is in addition to the agency's responsibility, as described in § 1500.9(d) of these guidelines, to insure the fullest practicable provision of timely public information concerning the existence and availability of environmental statements. The agency responsible for the environmental statement is also responsible for making the statement, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C., 552), without regard to the exclusion of intra- or interagency memoranda when such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action pursuant to § 1500.9 of these guidelines. Agency procedures prepared pursuant to § 1500.3(a) of these guidelines shall implement these public information requirements and shall include arrangements for availability of environmental statements and comments at the head and appropriate regional offices of the responsible agency and at appropriate State and areawide clearinghouses unless the Governor of the State involved designates to the Council some other point for receipt of this information. Notice of such designation of an alternate point for receipt of this information will be included in the Office of Management and Budget listing of clearinghouses referred to in § 1500.9(c).

(e) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these

guidelines concerning minimum periods for agency review and advance availability of environmental statements, the Federal agency proposing to take the action should consult with the Council about alternative arrangements. Similarly where there are overriding considerations of expense to the Government or impaired program effectiveness, the responsible agency should consult with the Council concerning appropriate modifications of the minimum periods.

(f) In order to assist the Council in fulfilling its responsibilities under the Act and under Executive Order 11514, all agencies shall (as required by section 102(2)(H) of the Act and section 3(i) of Executive Order 11514) be responsive to requests by the Council for reports and other information dealing with issues arising in connection with the implementation of the Act. In particular, agencies shall be responsive to a request by the Council for the preparation and circulation of an environmental statement, unless the agency determines that such a statement is not required, in which case the agency shall prepare an environmental assessment and a publicly available record briefly setting forth the reasons for its determination. In no case, however, shall the Council's silence or failure to comment or request preparation, modification, or recirculation of an environmental statement or to take other action with respect to an environmental statement be construed as bearing in any way on the question of the legal requirement for or the adequacy of such statement under the Act.

§ 1500.12 Legislative actions.

(a) The Council and the Office of Management and Budget will cooperate in giving guidance as needed to assist agencies in identifying legislative items believed to have environmental significance. Agencies should prepare impact statements prior to submission of their legislative proposals to the Office of Management and Budget. In this regard, agencies should identify types of repetitive legislation requiring environmental impact statements (such as certain types of bills affecting transportation policy or annual construction authorizations).

(b) With respect to recommendations or reports on proposals for legislation to which section 102(2)(C) applies, the final text of the environmental statement and comments thereon should be available to the Congress and to the public for consideration in connection with the proposed legislation or report. In cases where the scheduling of congressional hearings on recommendations or reports on proposals for legislation which the Federal agency has forwarded to the Congress does not allow adequate time for the completion of a final text of an environmental statement (together with comments), a draft environmental statement may be furnished to the Congress and made available to the public pending transmittal of the comments as received and the final text.

§ 1500.13 Application of section 102(2)(C) procedure to existing projects and programs.

Agencies have an obligation to reassess ongoing projects and programs in order to avoid or minimize adverse environmental effects. The section 102(2)(C)

procedure shall be applied to further major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of the Act on January 1, 1970. While the status of the work and degree of completion may be considered in determining whether to proceed with the project, it is essential that the environmental impacts of proceeding are reassessed pursuant to the Act's policies and procedures and, if the project or program is continued, that further incremental major actions be shaped so as to enhance and restore environmental quality as well as to avoid or minimize adverse environmental consequences. It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program.

§ 1500.14 Supplementary guidelines; evaluation of procedures.

(a) The Council after examining environmental statements and agency procedures with respect to such statements will issue such supplements to these guidelines as are necessary.

(b) Agencies will continue to assess their experience in the implementation of the section 102(2)(C) provisions of the Act and in conforming with these guidelines and report thereon to the Council by June 30, 1974. Such reports should include an identification of the problem areas and suggestions for revision or clarification of these guidelines to achieve effective coordination of views on environmental aspects (and alternatives, where appropriate) of proposed actions without imposing unproductive administrative procedures. Such reports shall also indicate what progress the agency has made in developing substantive criteria and guidance for making environmental assessments as required by § 1500.6(c) of this directive and by section 102(2)(B) of the Act.

Effective date. The revisions of these guidelines shall apply to all draft and final impact statements filed with the Council after January 28, 1973.

RUSSELL E. TRAIN,
Chairman.

APPENDIX I—SUMMARY TO ACCOMPANY DRAFT AND FINAL STATEMENTS

(Check one) () Draft. () Final Environmental Statement.

Name of responsible Federal agency (with name of operating division where appropriate). Name, address, and telephone number of individual at the agency who can be contacted for additional information about the proposed action and statement.

1. Name of the legislative action. () Administrative Action. () Legislative Action.

2. Brief description of the action and its purpose. Indicate the States (and counties) particularly affected and what other proposed Federal actions in the area, if any, are discussed in the statement.

3. Summary of environmental impacts and adverse environmental effects.

4. Summary of major alternatives considered.

5. (For draft statements) List all Federal, State, and local agencies and other parties from which comments have been requested.

(For final statements) List all Federal, State, and local agencies and other parties from which written comments have been received.

6. Date draft statement (and final environmental statement, if one has been issued) made available to the Council and the public.

APPENDIX II—AREAS OF ENVIRONMENTAL IMPACT AND FEDERAL AGENCIES AND FEDERAL STATE AGENCIES WITH JURISDICTION BY LAW OR SPECIAL EXPERTISE TO COMMENT THEREON

AIR

Air Quality

Department of Agriculture—
Forest Service (effects on vegetation)
Atomic Energy Commission (radioactive substances)
Department of Health, Education, and Welfare
Environmental Protection Agency
Department of the Interior—
Bureau of Mines (fossil and gaseous fuel combustion)
Bureau of Sport Fisheries and Wildlife (effect on wildlife)
Bureau of Outdoor Recreation (effects on recreation)
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
National Aeronautics and Space Administration (remote sensing, aircraft emissions)
Department of Transportation—
Assistant Secretary for Systems Development and Technology (auto emissions)
Coast Guard (vessel emissions)
Federal Aviation Administration (aircraft emissions)

River Basin Commissions (Delaware, Great Lakes, Missouri, New England, Ohio, Pacific Northwest, Souris-Red-Rainy, Susquehanna, Upper Mississippi) and similar Federal-State agencies should be consulted on actions affecting the environment of their specific geographic jurisdictions.

In all cases where a proposed action will have significant international environmental effects, the Department of State should be consulted, and should be sent a copy of any draft and final impact statement which covers such action.

Weather Modification

Department of Agriculture—
Forest Service
Department of Commerce—
National Oceanic and Atmospheric Administration
Department of Defense—
Department of the Air Force
Department of the Interior
Bureau of Reclamation

WATER RESOURCES COUNCIL

WATER

Water Quality

Department of Agriculture—
Soil Conservation Service
Forest Service
Atomic Energy Commission (radioactive substances)
Department of the Interior—
Bureau of Reclamation
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
Bureau of Sport Fisheries and Wildlife
Bureau of Outdoor Recreation
Geological Survey
Office of Saline Water
Environmental Protection Agency
Department of Health, Education, and Welfare
Department of Defense—
Army Corps of Engineers
Department of the Navy (ship pollution control)
National Aeronautics and Space Administration (remote sensing)
Department of Transportation—
Coast Guard (oil spills, ship sanitation)
Department of Commerce—
National Oceanic and Atmospheric Administration

Water Resources Council
River Basin Commissions (as geographically appropriate)

Marine Pollution, Commercial Fishery Conservation, and Shellfish Sanitation

Department of Commerce—
National Oceanic and Atmospheric Administration
Department of Defense—
Army Corps of Engineers
Office of the Oceanographer of the Navy
Department of Health, Education, and Welfare
Department of the Interior—
Bureau of Sport Fisheries and Wildlife
Bureau of Outdoor Recreation
Bureau of Land Management (outer continental shelf)
Geological Survey (outer continental shelf)
Department of Transportation—
Coast Guard
Environmental Protection Agency
National Aeronautics and Space Administration (remote sensing)
Water Resources Council
River Basin Commissions (as geographically appropriate)

Waterway Regulation and Stream Modification

Department of Agriculture—
Soil Conservation Service
Department of Defense—
Army Corps of Engineers
Department of the Interior—
Bureau of Reclamation
Bureau of Sport Fisheries and Wildlife
Bureau of Outdoor Recreation
Geological Survey
Department of Transportation—
Coast Guard
Environmental Protection Agency
National Aeronautics and Space Administration (remote sensing)
Water Resources Council
River Basin Commissions (as geographically appropriate)

FISH AND WILDLIFE

Department of Agriculture—
Forest Service
Soil Conservation Service
Department of Commerce—
National Oceanic and Atmospheric Administration (marine species)
Department of the Interior—
Bureau of Sport Fisheries and Wildlife
Bureau of Land Management
Bureau of Outdoor Recreation
Environmental Protection Agency

SOLID WASTE

Atomic Energy Commission (radioactive waste)
Department of Defense—
Army Corps of Engineers
Department of Health, Education, and Welfare
Department of the Interior—
Bureau of Mines (mineral waste, mine acid waste, municipal solid waste, recycling)
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
Geological Survey (geologic and hydrologic effects)
Office of Saline Water (demineralization)
Department of Transportation—
Coast Guard (ship sanitation)
Environmental Protection Agency
River Basin Commissions (as geographically appropriate)
Water Resources Council

NOISE

Department of Commerce—
National Bureau of Standards
Department of Health, Education, and Welfare
Department of Housing and Urban Development (land use and building materials aspects)

Department of Labor—
Occupational Safety and Health Administration
Department of Transportation—
Assistant Secretary for Systems Development and Technology
Federal Aviation Administration, Office of Noise Abatement
Environmental Protection Agency
National Aeronautics and Space Administration

RADIATION

Atomic Energy Commission
Department of Commerce—
National Bureau of Standards
Department of Health, Education, and Welfare
Department of the Interior—
Bureau of Mines (uranium mines)
Mining Enforcement and Safety Administration (uranium mines)
Environmental Protection Agency

HAZARDOUS SUBSTANCES

Toxic Materials

Atomic Energy Commission (radioactive substances)
Department of Agriculture—
Agricultural Research Service
Consumer and Marketing Service
Department of Commerce—
National Oceanic and Atmospheric Administration
Department of Defense
Department of Health, Education, and Welfare
Environmental Protection Agency
Food Additives and Contamination of Foodstuffs

Department of Agriculture—
Consumer and Marketing Service (meat and poultry products)
Department of Health, Education, and Welfare
Environmental Protection Agency

Pesticides

Department of Agriculture—
Agricultural Research Service (biological controls, food and fiber production)
Consumer and Marketing Service
Forest Service
Department of Commerce—
National Oceanic and Atmospheric Administration
Department of Health, Education, and Welfare
Department of the Interior—
Bureau of Sport Fisheries and Wildlife (fish and wildlife effects)
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
Bureau of Reclamation (irrigated lands)
Environmental Protection Agency

Transportation and Handling of Hazardous Materials

Atomic Energy Commission (radioactive substances)
Department of Commerce—
Maritime Administration
National Oceanic and Atmospheric Administration (effects on marine life and the coastal zone)
Department of Defense—
Armed Services Explosive Safety Board
Army Corps of Engineers (navigable waterways)
Department of Transportation—
Federal Highway Administration, Bureau of Motor Carrier Safety
Coast Guard
Federal Railroad Administration
Federal Aviation Administration
Assistant Secretary for Systems Development and Technology
Office of Hazardous Materials
Office of Pipeline Safety
Environmental Protection Agency

ENERGY SUPPLY AND NATURAL RESOURCES DEVELOPMENT

Electric Energy Development, Generation, and Transmission, and Use

Atomic Energy Commission (nuclear)
 Department of Agriculture—
 Rural Electrification Administration
 (rural areas)
 Department of Defense—
 Army Corps of Engineers (hydro)
 Department of Health, Education, and Welfare (radiation effects)
 Department of Housing and Urban Development (urban areas)
 Department of the Interior—
 Bureau of Indian Affairs (Indian lands)
 Bureau of Land Management (public lands)
 Bureau of Reclamation
 Power Marketing Administrations
 Geological Survey
 Bureau of Sport Fisheries and Wildlife
 Bureau of Outdoor Recreation
 National Park Service
 Environmental Protection Agency
 Federal Power Commission (hydro, transmission, and supply)
 River Basin Commissions (as geographically appropriate)
 Tennessee Valley Authority
 Water Resources Council

Petroleum Development, Extraction, Refining, Transport, and Use

Department of the Interior—
 Office of Oil and Gas
 Bureau of Mines
 Geological Survey
 Bureau of Land Management (public lands and outer continental shelf)
 Bureau of Indian Affairs (Indian lands)
 Bureau of Sport Fisheries and Wildlife (effects on fish and wildlife)
 Bureau of Outdoor Recreation
 National Park Service
 Department of Transportation (Transport and Pipeline Safety)
 Environmental Protection Agency
 Interstate Commerce Commission

Natural Gas Development, Production, Transmission, and Use

Department of Housing and Urban Development (urban areas)
 Department of the Interior—
 Office of Oil and Gas
 Geological Survey
 Bureau of Mines
 Bureau of Land Management (public lands)
 Bureau of Indian Affairs (Indian lands)
 Bureau of Sport Fisheries and Wildlife
 Bureau of Outdoor Recreation
 National Park Service
 Department of Transportation (transport and safety)
 Environmental Protection Agency
 Federal Power Commission (production, transmission, and supply)
 Interstate Commerce Commission

Coal and Minerals Development, Mining, Conversion, Processing, Transport, and Use

Appalachian Regional Commission
 Department of Agriculture—
 Forest Service
 Department of Commerce
 Department of the Interior—
 Office of Coal Research
 Mining Enforcement and Safety Administration
 Bureau of Mines
 Geological Survey
 Bureau of Indian Affairs (Indian lands)
 Bureau of Land Management (public lands)
 Bureau of Sport Fisheries and Wildlife
 Bureau of Outdoor Recreation
 National Park Service
 Department of Labor—
 Occupational Safety and Health Administration
 Department of Transportation
 Environmental Protection Agency
 Interstate Commerce Commission
 Tennessee Valley Authority

Renewable Resource Development, Production, Management, Harvest, Transport, and Use

Department of Agriculture—
 Forest Service
 Soil Conservation Service
 Department of Commerce
 Department of Housing and Urban Development (building materials)
 Department of the Interior—
 Geological Survey
 Bureau of Land Management (public lands)
 Bureau of Indian Affairs (Indian lands)
 Bureau of Sport Fisheries and Wildlife
 Bureau of Outdoor Recreation
 National Park Service
 Department of Transportation
 Environmental Protection Agency
 Interstate Commerce Commission (freight rates)
 Energy and Natural Resources Conservation

Department of Agriculture—
 Forest Service
 Soil Conservation Service
 Department of Commerce—
 National Bureau of Standards (energy efficiency)
 Department of Housing and Urban Development—
 Federal Housing Administration (housing standards)
 Department of the Interior—
 Office of Energy Conservation
 Bureau of Mines
 Bureau of Reclamation
 Geological Survey
 Power Marketing Administration
 Department of Transportation
 Environmental Protection Agency
 Federal Power Commission
 General Services Administration (design and operation of buildings)
 Tennessee Valley Authority

LAND USE AND MANAGEMENT

Land Use Changes, Planning and Regulation of Land Development

Department of Agriculture—
 Forest Service (forest lands)
 Agricultural Research Service (agricultural lands)
 Department of Housing and Urban Development
 Department of the Interior—
 Office of Land Use and Water Planning
 Bureau of Land Management (public lands)
 Bureau of Land Management (public lands)
 Bureau of Indian Affairs (Indian lands)
 Bureau of Sport Fisheries and Wildlife (wildlife refuges)
 Bureau of Outdoor Recreation (recreation lands)
 National Park Service (NPS units)
 Department of Transportation
 Environmental Protection Agency (pollution effects)
 National Aeronautics and Space Administration (remote sensing)
 River Basin Commissions (as geographically appropriate).

Public Land Management

Department of Agriculture—
 Forest Service (forests)
 Department of Defense
 Department of the Interior—
 Bureau of Land Management
 Bureau of Indian Affairs (Indian lands)
 Bureau of Sport Fisheries and Wildlife (wildlife refuges)
 Bureau of Outdoor Recreation (recreation lands)
 National Park Service (NPS units)
 Federal Power Commission (project lands)
 General Services Administration
 National Aeronautics and Space Administration (remote sensing)
 Tennessee Valley Authority (project lands)

PROTECTION OF ENVIRONMENTALLY CRITICAL AREAS—FLOODPLAINS, WETLANDS, BEACHES

AND DUNES, UNSTABLE SOILS, STEEP SLOPES, AQUIFER RECHARGE AREAS, ETC.

Department of Agriculture—
 Agricultural Stabilization and Conservation Service
 Soil Conservation Service
 Forest Service
 Department of Commerce—
 National Oceanic and Atmospheric Administration (coastal areas)
 Department of Defense—
 Army Corps of Engineers
 Department of Housing and Urban Development (urban and floodplain areas)
 Department of the Interior—
 Office of Land Use and Water Planning
 Bureau of Outdoor Recreation
 Bureau of Reclamation
 Bureau of Sport Fisheries and Wildlife
 Bureau of Land Management
 Geological Survey
 Environmental Protection Agency (pollution effects)
 National Aeronautics and Space Administration (remote sensing)
 River Basin Commissions (as geographically appropriate)
 Water Resources Council

LAND USE IN COASTAL AREAS

Department of Agriculture—
 Forest Service
 Soil Conservation Service (soil stability, hydrology)
 Department of Commerce—
 National Oceanic and Atmospheric Administration (impact on marine life and coastal zone management)
 Department of Defense—
 Army Corps of Engineers (beaches, dredge and fill permits, Refuse Act permits)
 Department of Housing and Urban Development (urban areas)
 Department of the Interior—
 Office of Land Use and Water Planning
 Bureau of Sport Fisheries and Wildlife
 National Park Service
 Geological Survey
 Bureau of Outdoor Recreation
 Bureau of Land Management (public lands)
 Department of Transportation—
 Coast Guard (bridges, navigation)
 Environmental Protection Agency (pollution effects)
 National Aeronautics and Space Administration (remote sensing)

REDEVELOPMENT AND CONSTRUCTION IN BUILT-UP AREAS

Department of Commerce—
 Economic Development Administration (designated areas)
 Department of Housing and Urban Development
 Department of the Interior—
 Office of Land Use and Water Planning
 Department of Transportation
 Environmental Protection Agency
 General Services Administration
 Office of Economic Opportunity

DENSITY AND CONGESTION MITIGATION

Department of Health, Education, and Welfare
 Department of Housing and Urban Development
 Department of the Interior—
 Office of Land Use and Water Planning
 Bureau of Outdoor Recreation
 Department of Transportation
 Environmental Protection Agency

NEIGHBORHOOD CHARACTER AND CONTINUITY

Department of Health, Education, and Welfare
 Department of Housing and Urban Development
 National Endowment for the Arts
 Office of Economic Opportunity

IMPACTS ON LOW-INCOME POPULATIONS

Department of Commerce—

Economic Development Administration (designated areas)
Department of Health, Education, and Welfare
Department of Housing and Urban Development
Office of Economic Opportunity
Historic, Architectural, and Archeological Preservation

Advisory Council on Historic Preservation
Department of Housing and Urban Development
Department of the Interior—
National Park Service
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
General Services Administration
National Endowment for the Arts

SOIL AND PLANT CONSERVATION AND HYDROLOGY

Department of Agriculture—
Soil Conservation Service
Agricultural Service
Forest Service
Department of Commerce—
National Oceanic and Atmospheric Administration
Department of Defense—
Army Corps of Engineers (dredging, aquatic plants)
Department of Health, Education, and Welfare
Department of the Interior—
Bureau of Land Management
Bureau of Sport Fisheries and Wildlife
Geological Survey
Bureau of Reclamation
Environmental Protection Agency
National Aeronautics and Space Administration (remote sensing)
River Basin Commissions (as geographically appropriate)
Water Resources Council

OUTDOOR RECREATION

Department of Agriculture—
Forest Service
Soil Conservation Service
Department of Defense—
Army Corps of Engineers
Department of Housing and Urban Development (urban areas)
Department of the Interior—
Bureau of Land Management
National Park Service
Bureau of Outdoor Recreation
Bureau of Sport Fisheries and Wildlife
Bureau of Indian Affairs
Environmental Protection Agency
National Aeronautics and Space Administration (remote sensing)
River Basin Commissions (as geographically appropriate)
Water Resources Council

APPENDIX III—OFFICES WITHIN FEDERAL AGENCIES AND FEDERAL-STATE AGENCIES FOR INFORMATION REGARDING THE AGENCIES' NEPA ACTIVITIES AND FOR RECEIVING OTHER AGENCIES' IMPACT STATEMENTS FOR WHICH COMMENTS ARE REQUESTED

ADVISORY COUNCIL ON HISTORIC PRESERVATION
Office of Architectural and Environmental Preservation, Advisory Council on Historic Preservation, Suite 430, 1522 K Street, N.W., Washington, D.C. 20005 254-3974

Regional Administrator, I,
U.S. Environmental Protection Agency
Room 2303, John F. Kennedy
Federal Bldg., Boston, Mass. 02203,
(617) 223-7210

Regional Administrator, II,
U.S. Environmental Protection Agency
Room 908, 26 Federal Plaza
New York, New York 10007
(212) 264 2525

DEPARTMENT OF AGRICULTURE¹

Office of the Secretary, Attn: Coordinator
Environmental Quality Activities, U.S. Department of Agriculture, Washington, D.C. 20250 447-3965

APPALACHIAN REGIONAL COMMISSION

Office of the Alternate Federal Co-Chairman,
Appalachian Regional Commission, 1686
Connecticut Avenue, N.W., Washington,
D.C. 20235 967-4103

DEPARTMENT OF THE ARMY (CORPS OF ENGINEERS)

Executive Director of Civil Works, Office of
the Chief of Engineers, U.S. Army Corps of
Engineers, Washington, D.C. 20314 693-
7168

ATOMIC ENERGY COMMISSION

For nonregulatory matters: Office of Assistant
General Manager for Biomedical and Environmental
Research and Safety Programs, Atomic Energy Commission, Washington,
D.C. 20545 973-3208

For regulatory matters: Office of the Assistant
Director for Environmental Projects, Atomic Energy Commission, Washington,
D.C. 20545 973-7531

DEPARTMENT OF COMMERCE

Office of the Deputy Assistant Secretary for
Environmental Affairs, U.S. Department of
Commerce, Washington, D.C. 20230 967-
4335

DEPARTMENT OF DEFENSE

Office of the Assistant Secretary for Defense
(Health and Environment), U.S. Department

Regional Administrator, III,
U.S. Environmental Protection Agency
Curtis Bldg., 6th & Walnut Sts.
Philadelphia, Pa. 19106
(215) 597-9801

Regional Administrator, IV,
U.S. Environmental Protection Agency
1421 Peachtree Street
N.E., Atlanta, Ga. 30309
(404) 526-5727

Regional Administrator V,
U.S. Environmental Protection Agency
1 N. Wacker Drive
Chicago, Illinois 60606
(312) 353-5250

Regional Administrator VI,
U.S. Environmental Protection Agency
1600 Patterson Street
Suite 1100
Dallas, Texas 75201
(214) 749-1962

Regional Administrator VII,
U.S. Environmental Protection Agency
1735 Baltimore Avenue
Kansas City, Missouri 64108
(816) 374-5493

Regional Administrator VIII,
U.S. Environmental Protection Agency
Suite 900, Lincoln Tower
1860 Lincoln Street
Denver, Colorado 80203
(303) 837-3895

Regional Administrator IX,
U.S. Environmental Protection Agency
100 California Street
San Francisco, California 94111
(415) 556-2310

Regional Administrator X,
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 442-1220

ment of Defense, Room 3E172, The Pentagon,
Washington, D.C. 20301 697-2111

DELAWARE RIVER BASIN COMMISSION

Office of the Secretary, Delaware River
Basin Commission, Post Office Box 360,
Trenton, N.J. 08603 (609) 883-9500

ENVIRONMENTAL PROTECTION AGENCY²

Director, Office of Federal Activities, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 755 0777

¹Requests for comments or information from individual units of the Department of Agriculture, e.g., Soil Conservation Service, Forest Service, etc. should be sent to the Office of the Secretary, Department of Agriculture, at the address given above.

²Contact the Office of Federal Activities for environmental statements concerning legislation, regulations, national program proposals or other major policy issues.

For all other EPA consultation, contact the Regional Administrator in whose area the proposed action (e.g., highway or water resource construction projects) will take place. The Regional Administrators will coordinate the EPA review. Addresses of the Regional Administrators, and the areas covered by their regions are as follows:

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

New Jersey, New York, Puerto Rico, Virgin Islands

Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia

Alabama, Florida, Georgia, Kentucky Mississippi, North Carolina, South Carolina, Tennessee

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Arkansas, Louisiana, New Mexico, Texas, Oklahoma

Iowa, Kansas, Missouri, Nebraska

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, Wake Island

Alaska, Idaho, Oregon, Washington

FEDERAL POWER COMMISSION

Commission's Advisor on Environmental Quality, Federal Power Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426 386-6084

GENERAL SERVICES ADMINISTRATION

Office of Environmental Affairs, Office of the Deputy Administrator for Special Projects, General Services Administration, Washington, D.C. 20405 343-4161

GREAT LAKES BASIN COMMISSION

Office of the Chairman, Great Lakes Basin Commission, 3475 Plymouth Road, P.O. Box 999, Ann Arbor, Michigan 48105 (313) 769-7431

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE²

Office of Environmental Affairs, Office of the Assistant Secretary for Administration and Management, Department of Health, Education and Welfare, Washington, D.C. 20202 963-4456

² Contact the Office of Environmental Affairs for information on HEW's environmental statements concerning legislation, regulations, national program proposals or other major policy issues, and for all requests for HEW comment on impact statements of other agencies.

For information with respect to HEW actions occurring within the jurisdiction of the Departments' Regional Directors, contact the appropriate Regional Environmental Officer:

Region I:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
Room 2007B
John F. Kennedy Center
Boston, Massachusetts 02203 (617) 223-6837

Region II:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
Federal Building
26 Federal Plaza
New York, New York 10007 (212) 264-1308

Region III:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
P.O. Box 13716
Philadelphia, Pennsylvania 19101 (215) 597-6498

Region IV:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
Room 404
50 Seventh Street, N.E.
Atlanta, Georgia 30323 (404) 526-5817

Region V:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
Room 712, New Post Office Building
433 West Van Buren Street
Chicago, Illinois 60607 (312) 353-1644

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT³

Director, Office of Community and Environmental Standards, Department of Housing and Urban Development, Room 7206, Washington, D.C. 20410 755-5980

Region VI:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
1114 Commerce Street
Dallas, Texas 75202 (214) 749-2236

Region VII:

Regional Environmental Officer
U.S. Department of Health, Education

and Welfare
601 East 12th Street
Kansas City, Missouri 64106 (816) 374-3584

Region VIII:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
9017 Federal Building
19th and Stout Streets
Denver, Colorado 80202 (303) 837-4178

Region IX:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
50 Fulton Street
San Francisco, California 94102 (415) 556-1970

Region X:

Regional Environmental Officer
U.S. Department of Health, Education and Welfare
Arcade Plaza Building
1321 Second Street
Seattle, Washington 98101 (206) 442-0490

³ Contact the Director with regard to environmental impacts of legislation, policy statements, program regulations and procedures, and precedent-making project decisions. For all other HUD consultation, contact the HUD Regional Administrator in whose jurisdiction the project lies, as follows:

Regional Administrator I,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
Room 405, John F. Kennedy Federal Building
Boston, Mass. 02203 (617) 223-4066

Regional Administrator II,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
26 Federal Plaza
New York, New York 10007 (212) 264-8068

Regional Administrator III,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
Curtis Building, Sixth and Walnut Street
Philadelphia, Pennsylvania 19106 (215) 597-2560

Regional Administrator IV,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
Peachtree-Seventh Building
Atlanta, Georgia 30323 (404) 526-5585

Regional Administrator V,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
360 North Michigan Avenue
Chicago, Illinois 60601 (312) 353-5680

DEPARTMENT OF THE INTERIOR⁴

Director, Office of Environmental Project Review, Department of the Interior, Interior Building, Washington, D.C. 20240 343-3891

INTERSTATE COMMERCE COMMISSION

Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423 343-6167

DEPARTMENT OF LABOR

Assistant Secretary for Occupational Safety and Health, Department of Labor, Washington, D.C. 20210 961-3405

MISSOURI RIVER BASINS COMMISSION

Office of the Chairman, Missouri River Basins Commission, 10050 Regency Circle, Omaha, Nebraska 68114 (402) 397-5714

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Office of the Comptroller, National Aeronautics and Space Administration, Washington, D.C. 20546 755-8440

NATIONAL CAPITAL PLANNING COMMISSION

Office of Environmental Affairs, Office of the Executive Director, National Capital Planning Commission, Washington, D.C. 20576 382-7200

NATIONAL ENDOWMENT FOR THE ARTS

Office of Architecture and Environmental Arts Program, National Endowment for the Arts, Washington, D.C. 20506 382-5765

NEW ENGLAND RIVER BASINS COMMISSION

Office of the Chairman, New England River Basins Commission, 55 Court Street, Boston, Mass. 02108 (617) 223-6244

Regional Administrator VI,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
Federal Office Building, 819 Taylor Street
Fort Worth, Texas 76102 (817) 334-2867

Regional Administrator VII,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
911 Walnut Street
Kansas City, Missouri 64106 (816) 374-2661

Regional Administrator VIII,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
Samsonite Building, 1051 South Broadway
Denver, Colorado 80209 (303) 837-4061

Regional Administrator IX,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
450 Golden Gate Avenue, Post Office Box 36003
San Francisco, California 94102 (415) 556-4752

Regional Administrator X,

Environmental Clearance Officer
U.S. Department of Housing and Urban Development
Room 226, Arcade Plaza Building
Seattle, Washington 98101 (206) 583-5415

⁴ Requests for comments or information from individual units of the Department of the Interior should be sent to the Office of Environmental Project Review at the address given above.

OFFICE OF ECONOMIC OPPORTUNITY

Office of the Director, Office of Economic Opportunity, 1200 19th Street, N.W., Washington, D.C. 20506 254-6000

OHIO RIVER BASIN COMMISSION

Office of the Chairman, Ohio River Basin Commission, 36 East 4th Street, Suite 208-20, Cincinnati, Ohio 45202 (513) 684-3831

PACIFIC NORTHWEST RIVER BASINS COMMISSION

Office of the Chairman, Pacific Northwest River Basins Commission, 1 Columbia River, Vancouver, Washington 98660 (206) 695-3606

SOURIS-RED-RAINY RIVER BASINS COMMISSION

Office of the Chairman, Souris-Red-Rainy River Basins Commission, Suite 6, Professional Building, Holiday Mall, Moorhead, Minnesota 56560 (701) 237-5227

DEPARTMENT OF STATE

Office of the Special Assistant to the Secretary for Environmental Affairs, Department of State, Washington, D.C. 20520
632-7964

SUSQUEHANNA RIVER BASIN COMMISSION

Office of the Executive Director, Susquehanna River Basin Commission, 5012 Lenker Street, Mechanicsburg, Pa. 17055
(717) 737-0501

TENNESSEE VALLEY AUTHORITY

Office of the Director of Environmental Research and Development, Tennessee Valley Authority, 720 Edney Building, Chattanooga, Tennessee 37401 (615) 755-2002

DEPARTMENT OF TRANSPORTATION *

Director, Office of Environmental Quality, Office of the Assistant Secretary for Environment, Safety, and Consumer Affairs, Department of Transportation, Washington, D.C. 20590 426-4357

*Contact the Office of Environmental Quality, Department of Transportation, for information on DOT's environmental statements concerning legislation, regulations, national program proposals, or other major policy issues.

For information regarding the Department of Transportation's other environmental statements, contact the national office for the appropriate administration:

U.S. Coast Guard

Office of Marine Environment and Systems, U.S. Coast Guard, 409 7th Street, S.W., Washington, D.C. 20590, 426-2007

Federal Aviation Administration

Office of Environmental Quality, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, 426-8406

Federal Highway Administration

Office of Environmental Policy, Federal Highway Administration, 400 7th Street, S.W., Washington, D.C. 20590, 426-0351

Federal Railroad Administration

Office of Policy and Plans, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, 426-1567

Urban Mass Transportation Administration

Office of Program Operations, Urban Mass Transportation Administration, 400 7th Street, S.W., Washington, D.C. 20590, 426-4020

For other administration's not listed above, contact the Office of Environmental Quality, Department of Transportation, at the address given above.

For comments on other agencies' environmental statements, contact the appropriate administration's regional office. If more than one administration within the Department of Transportation is to be requested to comment, contact the Secretarial Representative in the appropriate Regional Office for coordination of the Department's comments:

SECRETARIAL REPRESENTATIVE

Region I Secretarial Representative, U.S. Department of Transportation, Transportation Systems Center, 55 Broadway, Cambridge, Massachusetts 02142 (617) 494-2709

Region II Secretarial Representative, U.S. Department of Transportation, 26 Federal Plaza, Room 1811, New York, New York 10007 (212) 264-2672

Region III Secretarial Representative, U.S. Department of Transportation, Mall Building, Suite 1214, 325 Chestnut Street, Philadelphia, Pennsylvania 19106 (215) 597-0407

Region IV Secretarial Representative, U.S. Department of Transportation, Suite 515, 1720 Peachtree Rd., N.W. Atlanta, Georgia 30309 (404) 526-3738

Region V Secretarial Representative, U.S. Department of Transportation, 17th Floor, 300 S. Wacker Drive, Chicago, Illinois 60606 (312) 353-4000

Region VI Secretarial Representative, U.S. Department of Transportation, 9-C-18 Federal Center, 1100 Commerce Street, Dallas, Texas 75202 (214) 749-1851

Region VII Secretarial Representative, U.S. Department of Transportation, 601 E. 12th Street, Room 634, Kansas City, Missouri 64106 (816) 374-2761

Region VIII Secretarial Representative, U.S. Department of Transportation, Prudential Plaza, Suite 1822, 1050 17th Street, Denver, Colorado 80202 (303) 837-3242

Region IX Secretarial Representative, U.S. Department of Transportation, 450 Golden Gate Avenue, Box 36133, San Francisco, California 94102 (415) 556-5981

Region X Secretarial Representative, U.S. Department of Transportation, 1321 Second Avenue, Room 507, Seattle, Washington 98101 (206) 442-0590

FEDERAL AVIATION ADMINISTRATION

New England Region, Office of the Regional Director, Federal Aviation Administration, 154 Middlesex Street, Burlington, Massachusetts 01803 (617) 272-2350

Eastern Region, Office of the Regional Director, Federal Aviation Administration, Federal Building, JFK International Airport, Jamaica, New York 11430 (212) 995-3333

Southern Region, Office of the Regional Director, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320 (404) 526-7222

Great Lakes Region, Office of the Regional Director, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018 (312) 694-4500

Southwest Region, Office of the Regional Director, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101 (817) 624-4911

Central Region, Office of the Regional Director, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Missouri 64106 (816) 374-5626

Rocky Mountain Region, Office of the Regional Director, Federal Aviation Administration, Park Hill Station, P.O. Box 7213, Denver, Colorado 80207 (303) 837-3646

Western Region, Office of the Regional Director, Federal Aviation Administration, P.O. Box 92007, WorldWay Postal Center, Los Angeles, California 90009 (213) 536-6427

Northwest Region, Office of the Regional Director, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Washington 98108 (206) 767-2780

FEDERAL HIGHWAY ADMINISTRATION

Region 1, Regional Administrator, Federal Highway Administration, 4 Normanskill Boulevard, Delmar, New York 12054 (518) 472-6476

Region 3, Regional Administrator, Federal Highway Administration, Room 1621, George H. Fallon Federal Office Building, 31 Hopkins Plaza, Baltimore, Maryland 21201 (301) 962-2361

Region 4, Regional Administrator, Federal Highway Administration, Suite 200, 1720 Peachtree Road, N.W., Atlanta, Georgia 30309 (404) 526-5078

Region 5, Regional Administrator, Federal Highway Administration, Dixie Highway, Homewood, Illinois 60430 (312) 799-6300

Region 6, Regional Administrator, Federal Highway Administration, 819 Taylor Street, Fort Worth, Texas 76102 (817) 334-3232

Region 7, Regional Administrator, Federal Highway Administration, P.O. Box 7186, Country Club Station, Kansas City, Missouri 64113 (816) 361-7563

Region 8, Regional Administrator, Federal Highway Administration, Room 242, Building 40, Denver Federal Center, Denver, Colorado 80225

Region 9, Regional Administrator, Federal Highway Administration, 450 Golden Gate Avenue, Box 36096, San Francisco, California 94102 (415) 556-3605

Region 10, Regional Administrator, Federal Highway Administration, Room 412, Mohawk Building, 222 S.W. Morrison Street, Portland, Oregon 97204 (503) 221-2065

URBAN MASS TRANSPORTATION ADMINISTRATION

Region I, Office of the UMTA Representative, Urban Mass Transportation Administration, Transportation Systems Center, Technology Building, Room 277, 55 Broadway, Boston, Massachusetts 02142 (617) 494-2055

Region II, Office of the UMTA Representative, Urban Mass Transportation Administration, 26 Federal Plaza, Suite 1809, New York, New York 10007 (212) 264-8162

Region III, Office of the UMTA Representative, Urban Mass Transportation Administration, Mall Building, Suite 1214, 325 Chestnut Street, Philadelphia, Pennsylvania 19106 (215) 597-0407

Region IV, Office of UMTA Representative, Urban Mass Transportation Administration, 1720 Peachtree Road, Northwest, Suite 501, Atlanta, Georgia 30309 (404) 526-3948

Region V, Office of the UMTA Representative, Urban Mass Transportation Administration, 300 South Wacker Drive, Suite 700, Chicago, Illinois 60606 (312) 353-6005

Region VI, Office of the UMTA Representative, Urban Mass Transportation Administration, Federal Center, Suite 9E24, 1100 Commerce Street, Dallas, Texas 75202 (214) 749-7322

Region VII, Office of the UMTA Representative, Urban Mass Transportation Administration, c/o FAA Management Systems Division, Room 1564D, 601 East 12th Street, Kansas City, Missouri 64106 (816) 374-5567

Region VIII, Office of the UMTA Representative, Urban Mass Transportation Administration, Prudential Plaza, Suite 1822, 1050 17th Street, Denver, Colorado 80202 (303) 837-3242

Region IX, Office of the UMTA Representative, Urban Mass Transportation Administration, 450 Golden Gate Avenue, Box 36125, San Francisco, California 94102 (415) 556-2884

Region X, Office of the UMTA Representative, Urban Mass Transportation Administration, 1321 Second Avenue, Suite 5079, Seattle, Washington (206) 442-0590

DEPARTMENT OF THE TREASURY

Office of Assistant Secretary for Administration, Department of the Treasury, Washington, D.C. 20220 964-5391

UPPER MISSISSIPPI RIVER BASIN COMMISSION

Office of the Chairman, Upper Mississippi River Basin Commission, Federal Office Building, Fort Snelling, Twin Cities, Minnesota 55111 (612) 725-4690

WATER RESOURCES COUNCIL

Office of the Associate Director, Water Resources Council, 2120 L Street, N.W., Suite 800, Washington, D.C. 20037 254-6442

APPENDIX IV—STATE AND LOCAL AGENCY REVIEW OF IMPACT STATEMENTS

1. OMB Circular No. A-95 through its system of clearinghouses provides a means for securing the views of State and local environmental agencies, which can assist in the preparation of impact statements. Under A-95, review of the proposed project in the case of federally assisted projects (Part I of A-95) generally takes place prior to the preparation of the impact statement. Therefore, comments on the environmental effects of the proposed project that are secured during this stage of the A-95 process represent inputs to the environmental impact statement.

2. In the case of direct Federal development (Part II of A-95), Federal agencies are required to consult with clearinghouses at the earliest practicable time in the planning of the project or activity. Where such con-

sultation occurs prior to completion of the draft impact statement, comments relating to the environmental effects of the proposed action would also represent inputs to the environmental impact statement.

3. In either case, whatever comments are made on environmental effects of proposed Federal or federally assisted projects by clearinghouses, or by State and local environmental agencies through clearinghouses, in the course of the A-95 review should be attached to the draft impact statement when it is circulated for review. Copies of the statement should be sent to the agencies making such comments. Whether those agencies then elect to comment again on the basis of the draft impact statement is a matter to be left to the discretion of the commenting agency depending on its resources, the significance of the project, and the extent to which its earlier comments were considered in preparing the draft statement.

4. The clearinghouses may also be used, by mutual agreement, for securing reviews of the draft environmental impact statement. However, the Federal agency may wish to deal directly with appropriate State or local agencies in the review of impact statements because the clearinghouses may be unwilling or unable to handle this phase of the process. In some cases, the Governor may have designated a specific agency, other than the clearinghouse, for securing reviews of impact statements. In any case, the clearinghouses should be sent copies of the impact statement.

5. To aid clearinghouses in coordinating State and local comments, draft statements should include copies of State and local agency comments made earlier under the A-95 process and should indicate on the summary sheet those other agencies from which comments have been requested, as specified in Appendix I of the CEQ Guidelines.

[FR Doc.73-15783 Filed 7-31-73; 8:45 am]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-6049

COUNTY OF SUFFOLK, COUNTY OF NASSAU, et al.,

Appellees,

against

SECRETARY OF THE INTERIOR, et al.,

Appellants,

NATIONAL OCEAN INDUSTRIES ASSOCIATION, et al.,

Intervenor-Appellants.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Appellee,

against

SECRETARY OF THE INTERIOR, et al.,

Appellants,

NATIONAL OCEAN INDUSTRIES ASSOCIATION, et al.,

Intervenor-Appellants.

Affidavit of Service By Mail

STATE OF NEW YORK }
COUNTY OF NEW YORK }

SS:

Louis Mark, being duly sworn, deposes and says: That he is over twenty-one years of age: That on the 14th day of April 1977 he served two copies of the attached Brief For Appellee, County of Nassau on each of the following named

Jon. M. Kaufman, Sarah Chasis & Robert Stover, Esqs.
c/o Kommel, Rogers, Kaufman, Lorber & Shenkman
380 Madison Avenue
New York, N.Y. 10017

Irving Like, Esq.
Special Counsel, County of Suffolk
200 West Main Street
Babylon, New York 11702

David Trager, Esq.
U.S. Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Warren H. Gunther & F. Peter O'Hara
c/o Cullen & Dykman
177 Montague Street
Brooklyn, New York 11201

George A. Burrell, Esq.
220 Fifth Avenue
New York, New York 10001

E. Edward Bruce, Esq.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Gene W. Lafitte, Esq.
Liskow & Lewis
225 Barone Street
New Orleans, Louisiana 70112

and one copy on each of the following named

Francis G. Caldeira, Esq.
Town Attorney
Town of Islip
Town Hall
Main Street
Islip, New York 11751

W. Kenneth Chave, Jr., Esq.
Town Attorney
Town of Hempstead
Front Street
Hempstead, New York 11550

Francis J. Doran, Esq.
Town Attorney
Town of North Hempstead
Town Hall
220 Plandome Road
Manhasset, New York 11030

Joseph Colby, Esq.
Town Attorney
Town of Oyster Bay
Town Hall
Audrey Avenue
Oyster Bay, New York 11771

Anthony R. Corso, Esq.
Board of Trustees
Town of Huntington
Town Hall
227 Main Street
Huntington, New York 11743

William F. Dudine, Esq.
405 Lexington Avenue
New York, New York 10017

Rosenman, Colin, Freund, Lewis & Cohen, Esqs.
575 Madison Avenue
New York, N.Y. 10022

Vinson & Elkins, Esqs.
1701 Pennsylvania Avenue N.W.
Washington, D.C. 20006

David Muchow, Esq.
General Counsel
1515 Wilson Blvd.
Arlington, Va. 22209

Jack R. Pirozzolo, Esq.
50 Federal Street
Boston, Mass. 02110

Shearman & Sterling, Esqs.
53 Wall Street
New York, New York 10005

by enclosing said copies in fully post-paid wrappers and depositing same in The United States Post Office maintained at No. 350 Canal Street, New York City, New York.

Louis Mark

Louis Mark

Sworn to before me this

14th day of April 1977

Quinton C. Van Wyken

QUINTON C. VAN WYKEN
Notary Public, State of New York
No. 24-4087465
Qualified in Kings County
Commission Expires March 30, 1979

George A. Bennett, Esq.
120 Fifth Avenue
New York, New York 10001

E. Edward Bruce, Esq.
Livingston & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Gene W. LaFette, Esq.
Liskow & Lewis
225 Barone Street
New Orleans, Louisiana 70112

and one copy on each of the following named

Francis G. Caldeira, Esq.
Town Attorney
Town of Islip
Town Hall
Main Street
Islip, New York 11751

W. Kenneth Chave, Jr., Esq.
Town Attorney
Town of Hempstead
Front Street
Hempstead, New York 11550

Francis J. Doran, Esq.
Town Attorney
Town of North Hempstead
Town Hall
220 Elmhurst Road
Manhasset, New York 11030

Joseph Colby, Esq.
Town Attorney
Town of Oyster Bay
Town Hall
Avery Avenue
Oyster Bay, New York 11771

Anthony R. Corso, Esq.
Board of Trustees
Town of Huntington
Town Hall
127 Main Street
Huntington, New York 11743

William F. Dabine, Esq.
405 Lexington Avenue
New York, New York 10017

Rosenman, Collin, Freund, Lewis & Cohen, Esqs.
375 Madison Avenue
New York, N.Y. 10017